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PRACTICAL GUIDE TO LABOUR MANAGEMENT

LABOUR DISPUTES JOURNAL
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P R E F A C E

A new era was ushered in with India attaining her cherished goal of Independence. Keeping pace with modern developments in the diverse fields of Commerce, Industry Art Science and Technology etc independent India had to build up its economy anew and start its relentless crusade against wide spread poverty, disease and unemployment with a sense equally of deep dedication as well as urgency.

For progress, prosperity and self sufficiency large scale industrial enterprises had to be initiated. In common with their counterparts in other industrialized and developed countries of the world, Indian Labour also had to face some of the handicaps such as long hours of work, lack of holidays and leave, night shifts etc and above all insecurity of service or employment caused through a defective system of recruitment.

In recent times through confusions and conflicts, cogitations and agitations, many desirable adjustments have been achieved between the employer and the labour, with enactments of appropriate laws awards of Labour Courts and Tribunals, authoritative judicial interpretations of laws concerning the labour and the employer, the ground for misunderstanding and conflict between these, has been considerably narrowed down and adequate protection has been provided against wrongful dismissals.

The most effective way to ensure uninterrupted productions, as also increase of productions which the newly developing economy of a vast country like India needs and demands, would be to promote, to put it briefly, an appreciation of the imperative necessity of perfect harmony in the relationship between the employer and the employee. Both are deeply involved. The success of one is intertwined with the prosperity and well being of the other. Understanding and co-operation founded on clear knowledge of one's obligations, statutory rights and contractual relations may prove more enduring than mere unsatisfying idealism.

By enactments the rights and privileges of employees have been defined on one hand and obligations and responsibilities of the employer have been laid down on the other. It has to be borne in mind that law after all ensures ultimate justice to a citizen. Its inherent deterrent quality remains ineffective until there is proper and complete understanding of the commitments, obligations and

responsibilities on the part of all concerned. Perhaps many conflicts, litigations and consequent bitterness in relationships between-contending parties could be happily avoided with the desired understanding.

This publication is a humble effort on the part of the author to serve the practical idealism advocated earlier in this preface. It attempts to provide in a nutshell, under appropriate heads, practical hints on requirements and obligations imposed by different labour and industrial laws applicable to factories and other industrial concerns. So it should not be mistaken for codification of factory laws or the entire provisions of each such enactment. While it does not claim to be exhaustive nonetheless it is a handy compendium on the subject broadly and it presents the essential legal aspects in a simple way. It aspires to prove itself to be a useful guide to the employer and employee alike and to labour and personnel officers to boot.

I am indebted to my friend Mr. A. P. Sinha, former Commissioner, R. & R. and Custodian of Evacuee Property, Orissa, for his kind assistance to me in various ways, in the preparation of this book. My thanks are also due to Rai Sahib O. P. Aggarwala, who has so many books on law to his credit, without whose encouragement this book might not have taken shape at all.

H. L. Kumar

87, Lawyers Chambers,
Tis Hazari, Delhi-6

P. G. SECTION

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EMPLOYER EMPLOYEE RELATIONSHIP

The relationship between an employer and an employee arises out of a contract, which may be expressed in terms and conditions or an implied one. According to Blackston (Commentaries Vol 1, Page-422) the relationship of a master and servant is founded on convenience whereby a man calls for the assistance of another as his own skill and labour will not be sufficient to meet the exigencies, in other words bestow the same cares on himself as another person may be able to do. Sometimes the relationship between a master and a servant or an employer and an employee is or may be regulated by a statute. An employee is thus a person who voluntarily agrees whether for a wage or otherwise, to subordinate himself at all times during the period of service to the lawful orders and directions of his employer in respect of such work as is assigned to him by his employer.

Who is an employee ?

It has been observed by *Avory J in Hill vs. Beckett 1915, 1 K B 578*—that there is no better working rule for determining the question than that laid down many years ago by Blackburn J in *Keg v Negus 1973 (LR 2 CCR 34)* where he had said that the test is whether the alleged servant is under the control and bound to obey the orders of one who is alleged to be his master (employer). If he is, this constitutes the relationship of master and servant. A servant may be defined as any person employed by another to do work for him (employer) on certain terms and conditions expressed or implied and that the servant (employee) is to work under the control, orders and directions of his employer including the manner in which he (servant or employee) will discharge his duties and responsibilities.

Effect of Contract of Service

The important question arises as to what are the effects of the contract of service whether implied or expressed, on the relations of the parties. In the case of an expressed, contract for instance as contained in a letter of appointment or duly-executed agreement or deed form laid down or prescribed by law, there should be no difficulty in interpreting the conditions of service and to follow the same. When however, the contract of employment is only implied, all the circumstances bearing on it and relating to the same will be required to be considered in inferring the conditions by which the (employment) is governed.

It is a (basic) fact that no industrial development and output is possible without active co operation between capital and labour and the harmonious team-work to achieve these common objectives. The State on its part cannot play merely the role of a spectator. The vast and complex industrial organisations may primarily be the outcome of contract. The actual obligations between the employers and the workers are dynamic organisations, subject to change with the changes in social and economic conditions. Therefore, the Government by legislation has thought it necessary to regulate certain matters. Conditions of obligations must be deemed to have been superseded, amended, modified or altered by these legislative enactments and statutory rules framed thereunder. Subject to that, the general law of contract will apply to the relationship between the employer and the employee. It has been observed by the Supreme Court in *Devan Badri Das v IT* (1962 11 LLJ 366) that the broad, general question raised by the learned Solicitor-General on the basis of the employer's freedom of contract has been frequently raised in industrial adjudications and it has consistently been held that the said right is now subject to certain principles which have been evolved by industrial adjudications in advancing the cause of of early justice.

In the *Bharat Bank Ltd vs Employees of the Bharat Bank Ltd*, it was held as follows —

“In settling the dispute between the employers and the workmen, function of the Tribunal is not confined to administration of justice in accordance with the law. It can confer rights and privileges on either party which it considers reasonable and proper though they may not be within the terms of any existing agreement. It has not merely to interpret or to give effect to the contractual right and obligations of the parties. It can create new rights and obligations between them which it considers essential for keeping industrial peace.”

As discussed above, it will be seen that the contract of service has an important impact in governing the conditions of service of an employee in an industrial establishment and if it is found that the conditions of service are in accordance with the labour laws then the Industrial Tribunal/Court cannot vary the same and the doctrine of the absolute freedom of contract has to prevail.

APPOINTMENT OF EMPLOYEES

The human element is the most important factor in production. The most successful and enlightened managers or employers have realised that the efficient modern enterprises require greatest attention to the systematic and scientific management of workers. The technique of wise management lies in the task of maintaining peace, harmony and spirit of cooperation in the establishment so that the production should not suffer.

The first and most important step to achieve this object is the appointment of employees. It should be made very carefully in order to avoid the disputes in future between the employers and the employees. The conditions of service must be very clear and definite.

Every employee who enters in a contract of service with his management must be required to make a declaration as prescribed by the management to the effect that he has either read the conditions of service or have been explained to him. The declaration should be duly witnessed. The Model appointment letters to the various categories are given hereinafter. Necessary additions and amendments should be made according to the conditions prevailing and the nature of duties.

CLASSIFICATION OF WORKMEN

The categories of the workmen have been enumerated in the Industrial Employment Standing Orders (Central Rules), 1946 in Schedule I, Model Standing Orders as follows —

- (1) Permanent,
- (2) Probationers,
- (3) Badlies,
- (4) Temporary,
- (5) casual,
- (6) Apprentices

Permanent Workman —A 'permanent' workman is a workman who has been engaged on a permanent basis and includes any person who has satisfactorily completed a probationary period of three months in the same or another occupation in the industrial establishment, including breaks due to sickness accident, leave, lock out, strike (not being an illegal strike) or involuntary closure of the establishment

A workman can claim the status of permanent workman only when two conditions are satisfied *e g*

- (a) That his employment is throughout the year on the job for which he is appointed ,
- (b) That the job on which he is appointed is of permanent nature seasonal workman cannot claim the status of permanent workman

Probationer—A 'probationer' is a workman who is provisionally employed to fill a permanent vacancy in a post and has not completed three months service therein. If a permanent employee is employed as a probationer in a new post, he may, at any time during the probationary period of three months, be reverted to his old permanent post

A probationer is liable to be reverted to his own permanent post at any time during the probationary period of three months. There is no automatic confirmation of the probationer in the post. The period of probation may be varied by the concern in its standing order, condition of service or agreement. The management has a right to decide whether the work of the probationer has been satis-

factory during the probationary period. The probationer is generally appointed to permanent post. The services of probationer are liable to be terminated during the probation period.

Badli Workman—A 'badli' is a workman who is appointed in the post of a permanent workman or probationer who is temporarily absent.

He is just a temporary workman who gets his wages for the period he works. It has been laid down in *Andhra Jute Mills Co. Ltd. vs. Its Workmen* (1953 LAC 440) that Badli workman is not entitled to service benefit and allowances.

Temporary Workman—A 'temporary workman' is a workman who has been engaged for work which is of an essentially temporary nature likely to be finished within a limited period.

The temporary workman differs from a probationer. In *Niranjan Cinemas Allahabad vs. Allahabad Cinema Karamchari Sangh* (1953 1 LLJ 324) the Tribunal held that a temporary workman is a workman engaged for the work of temporary nature likely to be finished within a limited period. The employment of workman concerned was extended after the first appointment. Its extension and continuation up to the present time leads to the conclusion that they were employed on the permanent basis with a probationary period of three months.

Casual Workman—A 'casual' workman is a workman whose employment is of a casual nature.

Apprentice—An 'apprentice' is a learner who is paid an allowance during the period of his training.

An 'apprentice' does not enjoy better status than a probationer. An apprentice is paid an allowance or a stipend but not wages. The management of a concern has the discretion to classify apprentices.

Application for Appointment.

To

Subject. (Mention name of the post here)

Sir,

This has reference to your advertisement dated..... published in(Paper

I offer my services for the same. As regards my experience and qualifications add I beg to submit as under—

Particulars of the applicant

Name

Father's Name

Local and (i)
permanent address (ii)

Age

Nationality

Educational and Special qualifications
if any

(i)

(ii)

(iii)

Past experience

Present post with monthly salary

Salary expected

Identification mark

I assure you sir that if given a chance to work in your establishment factory I shall perform my duties to the entire satisfaction of my superiors I further assure you Sir that I shall abide by all the Rules and Regulations of the Establishment factory

Yours faithfully,

Application form for Appointment as an Employee

(Name of the post)

Applicant's name Father's name

Age Nationality

Local Address Permanent Home Address (In full)

References —(1)

(Their names and address)

(2)

qualifications Past Experience

Names of the Establishment, and posts held with period of service and salaries drawn—

(1) (2)

(3) (4)

Present post and monthly salary
The present post

Reasons for leaving

I hereby solemnly declare that the above information in the Application Form is correct to the best of my knowledge and belief. I am not suffering from any disease which may render me unfit for this post or affect the efficiency of my work. I have capacity to work in the job as applied for.

I further declare that I have read the terms and conditions of service and the standing orders. The terms and conditions of service and the standing orders have been explained to me.

Dated

Letter of Interview

(Name of the factory company etc)

No _____ Dated _____

To _____
The workman (name and address of the workman)

Dear Sir,

This has the reference to your application dated _____. We have pleasure in inviting you to an interview on _____ between 10 A. M. and 4 P. M. You are required to be present past at 10 A. M. sharp.

On that date you are also required to undergo a medical test. Please bring all the certificates and testimonials in original.

Please note that no travelling conveyance allowance shall be paid to you by the company. You will bear all such expenses.

Yours faithfully,

Letter of Appointment as An Apprentice—I

To _____
Shri _____

Dear Sir,

With reference to your application dated _____ for learning the work of _____ in the _____ Department of our factory/workshop/firm/concern/company as an apprentice, we hereby inform you that you are permitted to learn the said work on the following conditions—

1. That the period for apprenticeship shall consist of
.....in the first instance
 2. That the Management does not guarantee any job to you on the completion of the said apprenticeship period.
 3. That the apprenticeship can be terminated at any time without giving any notice or assigning any reasons.
 4. That you will be paid a stipend of Rs. per month
 5. That you will abide the directions, instructions and the rules of discipline of the establishment issued and altered from time to time
 6. That a fresh contract for learning work in other departments shall be considered on the completion of the prescribed period for apprenticeship
 7. That any breach or contempt of any rule, instruction, and or order shall entitle the Management to forth with terminate your apprenticeship.
 8. That you will not act in manner prejudicial to the interests of establishment
 9. That you will be punctual to your duties and shall learn work honestly, faithfully and diligently
 10. That you will not be entitled to any bonus at all.
- If you accept the above terms please signify your consent on the carbon copy in writing and send same to us.

Yours faithfully
Manager.

Letter of Appointment to an Apprentice II

To

Shri _____

Dear Sir,

This has reference to your application for appointment as an apprentice in our firm/factory/company/Establishment. We have pleasure in intimating to you that we take you as an apprentice in our _____ Department on the following terms and conditions—

- 1.) You will be taken as an apprentice with effect from _____

2) The period of your apprenticeship shall in the first instance, be for a period not exceeding ——— month. If found expedient, the same can be extended for a further period of ——— months. Your apprenticeship is liable to be terminated at the discretion of the Management any time during the period of apprenticeship without giving any notice and assigning any reasons.

3 You will get a consolidated stipend at the rate of Rs ——— per day/week/month.

4 In addition to above terms and conditions your apprenticeship shall be governed by the standing orders and rules of the factory/firm/company/establishment as may be applicable to you from time to time.

5 On the expiry of the period of apprenticeship or any extended period thereof if your work is found satisfactory you may be considered for appointment as a probationer regular employee.

I accept and confirm

Yours faithfully,

Signature

Letter of Appointment to a worker of factory

Dear Sir,

We hereby offer you the post of _____ in the _____ in the time scale of pay of Rs _____ on commencing salary of Rs _____ per month. Your subsequent salary will be regulated by orders which the Company may issue from time to time.

2 The terms and conditions of your service including the termination thereof will be as specified below—

- (i) You shall be subject to the Service Rules regulating the payment of allowance etc the conduct, discipline and appeal rules as well as the Administrative Orders of the Company in force from time to time and shall obey all such orders and directions as you receive from your superiors.
- (ii) You shall faithfully serve the Company/concern and shall obey its lawful commands, not disclose its secrets diligently and carefully learn and perform such work and business as may be entrusted to you. Your whole times shall be at the disposal of the Company/concern and you shall not carry on or be concerned with

whether directly or indirectly, any other business or occupation whatsoever

- (iii) You shall be responsible for the charge and care of the Company's/Concern's goods and stores and any other property entrusted to you or in your hands and shall truly and faithfully account for, or pay over, or deliver to the proper person all moneys goods and stores and property which in it, at any time, come to your hands or under your charge on account of the Company
- (iv) You shall be bound, if and when, required by the Management to serve in any Department of their business or in any other business or in any other business of the Company or concerns of the Company to go or be transferred to any other place in connection with their business in which case you will be allowed travelling allowance as provided for in the Company's rules.
- (v) The Company shall have the right and discretion to terminate your service at any time without giving notice and amongst any reason during the first twelve months of service or during the probationary period, whichever is longer and thereafter on giving you three calendar months notice in writing or by paying to you in addition to any salary then due to you a sum equal to three months' salary in lieu of the notice at the rate you are then enjoying and similarly you may terminate your service by giving three months' notice or salary in lieu thereof
- (vi) You shall not take out patents for any inventions made by you during the period of your service except with the prior written permission of the company.
- (vii) The Management shall also have the right to terminate your services at any time without notice if you are guilty of insubordination, intemperance, corrupt practices or any other misconduct or any breach or non-performance of any of the provisions of these conditions or of any rules pertaining to your service.
- (viii) Your service shall automatically stand terminated when you have completed 58 years of age unless the Company has in the meantime agreed to retain you beyond that age and you have agreed to continue to serve.
- (ix) During the time of your service, you shall subscribe

to such provident fund as the Company may require and you shall abide by the rules of the said fund.

- (x) The Company will have the absolute right to promote or demote its employees. It will be exclusively for the Company to judge which person is fit for which post and as an enlightened employer it will take into consideration if any person duly qualified with good record with suitable quality from amongst the existing workers staff could suitably fill a higher post. In case no suitable person will be found from amongst the personnel of the existing staff for a particular job, it will be within the absolute discretion and jurisdiction of the Company to appoint persons from outside, promotion will not be a question of inherent right of any employee and the Company cannot be compelled to promote any unqualified unsuitable member of the staff whose appointment is likely to result in inefficiency and loss to the Company.

3 The following acts and omissions shall be treated as misconduct :

- (a) wilful insubordination or disobedience, whether alone or in combination with others, to any lawful and reasonable orders of a superior,
- (b) theft, fraud or dishonesty in connection with the employer's business or property,
- (c) wilful damage to or loss of employer's goods or property,
- (d) taking or giving bribes or any illegal gratification,
- (e) habitual absence without leave or absence without leave for more than 10 days,
- (f) habitual late attendance,
- (g) habitual breach of any law applicable to the establishment,
- (h) notorious or disorderly behaviour during working hours at the establishment or any act subversive of discipline,
- (i) habitual negligence or neglect of work,
- (j) frequent repetition of any act or omission for which a fine may be imposed to a maximum of 2 per cent of the wages in a month,
- (k) striking work or inciting others to strike work in law, or rule having the force of law.

4 The Company will have right to suspend you for any misconduct or otherwise and during suspension period you will get only subsistence allowance which will not be more than 50% of then salary

5 If the terms and conditions contained in this letter are acceptable to you you are requested to convey your acceptance of the offer in the enclosed form and report for duty in the Office at by or earlier failing which it will be presumed that you are not interested in this offer and it will be treated to having been withdrawn

Yours faithfully,

Letter of Appointment to a Probationer

To

Dear Sir,

With reference to your application (letter No of), the undersigned has great pleasure in informing you that you have been appointed by the factory/firm/company as a probationer for a period of one year in the Department of the factory/firm/company on the following terms and conditions —

1 Your appointment as a probationer shall take effect from

2 Your appointment as a probationer is based on the information supplied by your application for employment as well as the interview held by the factory/firm/company on

3 If it is deemed expedient your term of probation, in the exclusive discretion of the factory/firm/company, can be extended for a further period of months

4 During the term of your probation you will get Rs salary/wages per (month or week)

5 If at the end of your probation period or extended period of probation, you are found fit and suitable for the job you will be confirmed in your appointment otherwise your appointment shall be terminated at the discretion of the factory/firm/company without assigning any reasons whatsoever

6 By accepting this appointment you shall have to abide by the terms and conditions of the Standing Orders concerned and by the Rules of the factory/firm/company as in force from time to time

You shall agree to accept the remuneration and the different assignments offered to you from time to time at the discretion of the factory/firm/company

7 You shall obey the orders and directions of the General Manager and other officers of the Factory/firm/company and work according to the working programme thereof

Please confirm and sign the enclosed carbon copy of this letter as a token of your approval

Accepted and confirmed

Yours faithfully,

Signature of employee/worker

Confirmation letter to a probationer/apprentice

Date

Name of the employee/worker

Initial date of appointment as apprentice _____

Made permanent on———(apprenticeship period is not to be counted as part of length of service)

Present designation

Present time-scale of pay allowed to employee/worker

Dearness allowance allowed to employee/worker

The annual increments permissible to you in the aforesaid pay scale shall be payable to you on your satisfactory record, work and service. Similarly, increments beyond the efficiency bar laid down in the scale of pay will purely depend upon your efficiency, merit and abilities to be judged and assessed by the factory/firm/company/establishment from your service records

You will abide by the terms and conditions of the Standing Orders and Rules framed by the factory/firm/company/establishment as applicable to you and as in force from time to time besides the aforesaid terms and condition in this letter

Yours faithfully

I accept and confirm

Signature of worker/employee)

Letter of Appointment to a Part time employee

With reference to your application for appointment as part time _____ in this establishment, you are appointed as part time _____ on the following terms and conditions

- 1 That you will join this concern as a part time immediately, not later than
- 2 That you will be paid for the work done by you
- 3 That you will be responsible for carrying out the work which may be assigned to you from time to time and will be at liberty to do the work at your convenience and will do with working hours of this concern
- 4 That you will not disclose the secrets of this concern to any one and if you commit any such act, the management will be at liberty to take legal action against you
- 5 That you will not have a status of a workman as defined under the *Industrial Disputes Act*

If the above conditions of appointment are acceptable to you please sign the accompanying duplicate copy of this letter giving your consent to the above terms and conditions Manager

I have fully understood the terms and conditions and I accept the same and sign the duplicate copy of this letter showing my consent to the terms and conditions

Signature of employee

Letter of Appointment to travelling salesman

This has reference to your application for a job in our establishment and subsequent interview, you are hereby appointed as a *Travelling Salesman* on the following terms and conditions

- 1 That you will be paid a consolidated salary of Rs — as fixed
- 2 That you will be on probation for a period of — (as the case may be) and the Management shall have a right to extend the probation period, and if the probation period is not extended, then you will remain as a temporary employee and the management will have a right to terminate your service
- 3 That you will not become permanent unless and until a letter in writing is not issued to you in this behalf
- 4 That you will be required to do all sort of office work which may be assigned to you from time to time
- 5 That your services will be governed by the Rules and Regulations in existence in the establishment
- 6 That you will carry out all sorts of orders which may be given to you by our superiors

- 7 That the Management shall have a right to suspend you *in the event of your committing any mis-conduct and in that case you will not be entitled to any subsistence allowance during the suspension period*
- 8 That your services will be liable to transfer from one Department to another or to any other place in India, where the office of the establishment exist at any time
- 9 That the grant of increments will be at the sole discretion of the Management and that you shall not claim the same as a matter of right
- 10 That you will furnish a security unto the satisfaction of the Management
- 11 That you will not disclose any secret of the Management
- 12 That you will not refuse to work overtime as and when desired by the Management
- 13 That you will get 1% commission on the sales over Rs 10,000/- per annum
- 14 That you will be incharge of the sales in the area and shall propogagate and popularise the Company's products
- 15 That you will not carry out the work of salesmanship of any other firm during the period you serve the firm
- 16 That your services will be transferable to any other Branch of the Company
- 17 That you will get Rs ———— as daily allowance besides and actual travelling allowance
- 18 If the above conditions of service are acceptable to you please sign the accompanying duplicate copy of this letter signifying your assent and same to us

Manager

I have fully understood the terms and conditions and I accept the same and sign acceptance on the duplicate copy of the appointment letter.

Signature of Employee

Appointment of Company Auditors

Resolved that in pursuance of Sec 228(1) of the Companies Act, 1956, the Company appoints the firm of auditors, Messrs

Rathi Mal Jethu Mal Bombay, to audit the accounts of the Company at its Registered Office at Bombay and the accounts of the Branch Offices of the Company at Ahmedabad Kanpur and Delhi

Resolved further that the said firm shall hold Office from the conclusion of this meeting until the conclusion of the next Annual General Meeting of the Company and shall get as their remuneration of Rs ————— payable in instalments or a lump sum

Declaration by employee/worker

I hereby accept the employment offered to me by the factory/firm/company/establishment as a worker/employee make the following declaration —

The terms and conditions of my service and also the standing orders and the Rules of the factory/firm/company as applicable to me have been fully read and understood by me/have been explained to me and I have fully understood the contents thereof

I hereby/agree and accept the terms regarding scale and rate of pay dearness allowance, bonus payments for overtime work, stoppage and reduction pay etc leave privileges and provisions relating to discipline

Place—————

Dated—————

(Signature of the employee/worker)

Agreement with an Independent Contractor

This agreement made this day of of
between Proprietor/Public Limited Private Limited/Partnership,
through (hereinafter called the Principal) of the
one part, and son of resident of
 (hereinafter) called the Contractor) of the other part

Whereas the principal is doing the business of

And whereas the work of is not necessarily
a part of the business of the Principal but is only accessory to it

And whereas it can be better executed by an independent contractor the principal is desirous of giving out the same on contract to some dependable person

And whereas the contractor is willing to undertake the same on contract basis

Now, therefore this deed of contract witnesseth as follows —

1 That the principal shall allow and appoint the Contractor to execute and fulfil the works and obligations hereinafter provided in the manner hereinafter appearing without any interruption

2 That the Contractor agrees to execute, fulfil and discharge the works and obligations, hereinafter provided in the manner hereinafter appearing, to the entire satisfaction of the Principal

3 That the duration of this Contract is from the date of these presents, though the parties will have a right to extend the period to any extent to which the parties may mutually agree before the expiry of the stipulated period

4 That the Contract may be determined even before the stipulated period by either party by giving the other one month's notice in writing

5 In the event of non compliance or breach of the terms of the contract or unsatisfactory and inefficient working the Principal will be at liberty to revoke the contract by a week's notice in writing

6 That the Contractor will execute and efficiently handle the work entrusted to him in accordance with the directions and specific instructions of the Principal (or according to the sample given by the Principal him) and the work so entrusted shall not be regarded as having been correctly executed or efficiently handled until it is approved by the principal

7 That the principal will/may if it suits his convenience provide the contractor the place to work

8 The principal will/may if it suits his convenience or serves his interest give the requisite raw materials machinery, tools and implements required for purpose of the execution of the work entrusted to the Contractor subject to payment of rent or otherwise, as the case may be or as it is mutually agreed upon

9 That all the goods mentioned in para 8 will remain in the custody of the Contractor whose liability in respect of the same will be that of a bailee

10 That the Contractor will properly account for the raw materials if taken from the principal, and will return the machinery, tools and implements provided by the principal in good running conditions subject to the natural wear and tear, on the expiry of the terms of the contract on its determination or revocation earlier as heretofore provided

11 The Contractor will not acquire any right whatsoever to the portion of the premises occupied by him for the execution of the contract or work and deliver its vacant peaceful possession to the

principal or his representative on the expiry of the term of the contract or on its earlier determination or revocation

12 The Contractor will be paid as under —

13 The Contractor will submit his bill on the last day of the month to the principal regarding all the work done by him during that month, and the principal will subject to adjustments, if any, mutually agreed upon make full/90% payment of the bill latest by the 5th/7th of the next month

14 That the principal may give and the Contractor may ask for advances in order to facilitate the execution of the works to be adjusted against payment Contractor of bills

15 That the Contractor will be the best judge as to the number of the workmen to be engaged for the stipulated work and will alone be entitled to dictate to such workmen the manner of execution, the stipulated work without any interference whatsoever by the principal. The principal will have no direct contact with the workmen engaged by the Contractor nor will he exercise any supervision or control over the manner nor will he dictate to the workmen the manner by which anything is to be done by them. The principal will be entitled to give any directions or instructions to the Contractor only. The principal will have nothing to do with the conditions of employment or engagement or manner or mode of the same. The principal will not be entitled to retain any control in the manner of their discharge, dismissal and reinstatement

16 That the Contractor will be responsible for the due observance of any statutory conditions or requirements of various labour laws applicable to his workmen either independently or for reasons of their working in the premises of the principal

17 That it will not be obligatory on the part of the Contractor either to personally work for the execution of the job or to be even present personally at the premises. He will be free to work anywhere else or to undertake any other contract, provided that he will remain responsible to the Principal for the due and efficient execution of the stipulated work, as well as for the acts of omission or commission on the part of his workers, causing loss or damage to the work or the property of the principal. The principal will not, in any manner, be responsible for any acts of omission or commission of the Contractor's workmen and no claim in this respect will lie against the principal. If, however, any such claim is made against the principal which he is bound to discharge by reason of any Statute or any provision or dictate of Law due to the mere fact of their working at the principal's premises, the Contractor will be bound to indemnify the principal

18. That the principal may lend clerical assistance to the

contractor for the maintenance of accounts or registers or forms required to be maintained under any law

In witness whereof the parties aforesaid have set their hand on the day, month and the year mentioned above

Principal

Contractor

Witness

Witness

Address

Address

Piece time work Agreement

I son of aged resident hereby agree that I will work in your (establishment factory shop etc) as an independent contractor and not as an employee on the following terms and conditions —

1 That you will not charge any rent from me for the space/place I will occupy to do the job assigned to me

2 That whatever job work you will assign to me in the form of (making complete suit or coat or other apparel/shoes/slippers/holdalls/suitcases/attache cases/underwears/vests/socks/proof reading/composing/printing folios maps receipt books vouchers forms etc) I will charge you as per schedule annexed hereto

3 That I will give you the minimum production at the rate of per day

4 That in case the job done by me should not be satisfactory either to you or to your customers I shall be liable to alter exchange or repair and in default whereof I shall appropriately compensate you or your customers as the case may be

5 That I shall not work or engage myself for any other person firm or company during the period so long as you continue to assign the job work to me

6 That in consideration of your having allowed me to work in your establishment/factory/shop without any charges I will never refuse to attend to ordinary repair work or other similar work that you may require me to do but it will be in your discretion to pay or get me paid by the customer in respect of such services rendered by me

7 That I shall be responsible as a bailee to take appropriate care of the materials so allowed to be taken out of by me

8 That I shall serve one calender month's notice in advance for revoking this agreement

We accept the arrangement

(Sd)

(Sd)

Proprietor/Partner

Dated

Place

Agreement with an Employee and his surety

This agreement made at _____ the _____ day
of _____ 19 _____ between _____
(hereinafter called the _____ which expression shall include their
successors and assigns where the context so admits) of the first part

(hereinafter called the employee of the second part)

and

(hereinafter called the Surety of the third part)

WHEREAS the employee has applied to the Company for a job

AND WHEREAS the said employee declares that all the statements made by him in his application with respect to his qualifications etc are absolutely true and correct

AND WHEREAS the Surety has agreed to guarantee the due discharge of duties by the said employee and indemnify the Company on demand for any money due or which may become due in consequence of the carelessness negligence, or/and fraud or any omission or commission during the employee's employment with the Company, whether the said default is committed by the employee himself or by any other person for which the employee is responsible

AND WHEREAS on the basis of the statements made in his application by the employee as well as the aforesaid guarantee of the Surety, the Company has been induced to take the employee into employment

Now this Agreement witnesseth as under

(1) That it is agreed between the parties that the employees employment is for a specific period of

(2) That the employee shall be on probation for a minimum period of months. The period of probation may be extended at the discretion of the Company. Unless a letter in writing confirming the employee after successful completion of the said probationary period to the entire satisfaction of the Company is given, the employee shall not be deemed to be a permanent employee of the Company and any benefits which may be available to other permanent employees of the Company will not be available to him.

(3) That it is further agreed that continuous absence for 3 days on the part of the employee without sanction in writing by the General Manager or Branch Manager will be considered as the abandonment of the job by the employee unless the Management condones his default. This provision shall not be affected by any number of defaults that may be condoned by the Company.

(4) That the terms and conditions contained in the appointment letter No dated given to the employee would be read as a part of this Agreement.

(5) That this contract may be earlier terminated by either party without assigning any reason thereof on giving one month's or on payment of an amount equivalent to one month's salary in lieu of notice. No notice or pay in lieu thereof shall, however, be necessary if the contract is terminated by either party within three months of signing this contract, or if the services are terminated by way of punishment for any misconduct or if termination is on account of breach of any rule or stipulation in force in the Company or for any breach of the terms of this Agreement. The contract shall automatically lapse on the expiry of the specific period mentioned herein or as extended by mutual consent of the Company and the employee, from time to time.

6. That this contract of Surety provided herein shall subsist throughout the service of the employee with the Company and shall not be withdrawn by the said Surety for any reason whatsoever unless three calendar months notice in writing under Registered A D cover of his intention to do so is given to the Company and till the expiry of the said notice period and without prejudice to whatever liability that he has incurred till the expiry of the notice period.

7. That in the event of the said Surety withdrawing or the said Surety becoming financially unsound or otherwise the company feels that the said Surety is no longer sound because the employee has been entrusted with higher responsibilities or otherwise, then the

said employee agrees to give another sound personal surety acceptable to the Company within one month of his being required to do so and on his failure, he shall be liable to be discharged from the service with one month's notice

8 That the said Surety shall inform the Company by Registered post with A D as and when there is a material change in his financial standing but that in itself will in no way absolve him from the responsibility under this contract

9. That this contract of Surety provided herein shall continue to be in force irrespective of the variation in the terms, tenure, responsibility and duties of the employee

10 That the said employee and the Surety do hereby agree and bind themselves jointly and severally to indemnify and to pay to the Company actual amount for any loss or damage suffered by the Company on account of any negligence, dishonesty, act of omission or commission by the said employee or on account of any embezzlement or misappropriation or loss of any property or cash of the Company and the Surety hereby expressly agrees that the Company on suffering such a loss or damage may proceed against the Surety for the recovery of the amount etc, even without first seeking it's remedy against the employee

11 That it is hereby agreed that all civil disputes relating to the consideration, interpretation and any matter arising out of or under this agreement shall be triable by the Civil Court atonly.

Having clearly understood the terms and conditions set forth hereinabove, and in witness whereof the parties do hereby affix their signatures

Witness.....

Employee

Signature

Witness

Surety

Signature

For and on behalf of the Company

Signature

Agreement between the owner of a business and the Manager on salary and commission on profits.

This agreement is made on——day——of——19——, between AB and Brothers, a firm carrying on business of—— at——and acting through——of——a partner thereof, of the one part (hereafter called the "Firm") and CD, son of——of——resident of——aged——year of the other part (hereafter called the "Manager") on the terms set forth here under.—

The parties to this agreement hereby mutually agree :

1. That the Manager shall manage and carry on the business of the said Firm in the usual course of trade, diligently according to

the best of his ability, talent and experience and for the benefit of the said Firm and in so doing shall properly superintend, organise and execute the works, undertakings and deeds appropriate to the said business

2 The Manager shall have the power and authority to engage in or dismiss from the employment of the Firm any clerk, accountant or other employee under him and reprimand take to account or impose such fine on any delinquent employee, provided always that he shall obtain consent in writing of at least one partner of the Firm in the event of engaging or dismissing or imposing a fine for the second time on any person or employee engaged on a monthly salary of Rs 200 or above

3 That the said Manager shall represent the Firm in all its dealings with third persons but he shall not be entitled to borrow on behalf of the Firm and shall not incur any liability on behalf of the Firm exceeding in one transaction the sum of Rs 5,000

4 The Manager shall be paid a monthly salary of Rs ——— In addition, the Manager shall be entitled to receive ——— per cent commission on the net profits of the Firm after deducting the Income-tax paid, calculated every year for the financial year (1st April to 31st March of the next year) and which shall be payable to him after the Income tax Officer concerned has assessed the income tax for the year in question

5 The Manager shall keep and maintain regular and proper accounts in the books of the Firm supported by vouchers or other memoranda, which shall satisfy the Income tax or other taxing authority and wherefrom a proper balance sheet and profit and loss account shall be framed and exhibited for the Firm every six months. He shall get the accounts audited and passed by Mr ———, who is appointed by the Firm as auditor of the firm's accounts or such other auditor as the Firm may from time to time appoint in writing

6 The Manager shall keep in the premises of the Firm an office order book and an attendance register where in shall be entered all office orders or regulations from time to time promulgated by the Manager to regulate the business of the Firm or which may be passed by the Firm and shall mark himself the attendance of the employees of the Firm or cause the same to be marked according to the exigencies of the time, in the attendance register.

7 The Manager shall obey all office orders passed by the Firm and noted in the office order book or otherwise communicated to him in writing and shall faithfully serve the Firm so as to advance the interests of the Firm. He shall devote the whole of his time and attention to the business of the Firm and he shall not during the

currency of this agreement carry on or be interested in any other business of any kind whatsoever

8. The Manager shall not disclose the secrets or other affairs of the Firm to any person during or after the termination of this agreement except to a person in authority lawfully entitled to such disclosure.

9. Either party may terminate this agreement by serving a notice of six months on the other. The Firm may, however, terminate the services of the Manager peremptorily at any time on the ground of misappropriation, fraud or gross mismanagement of the business of the Firm in which event the Manager shall be entitled to six months' salary in lieu of notice and the proportionate amount of net profits for the period of the year that he remained in service of the Firm. Provided, however, that on proof of misappropriation, fraud or gross mismanagement he shall forfeit such emoluments as from the said date of termination

In witness whereof the parties aforementioned have executed this agreement.

1. _____

2. _____

Partners of the Firm

Manager.

Labour Agreement Through A Mate

WHEREAS Shri. . . . son of Shri . . . , aged years at present residing at hereinafter called the "Tailor" alleges himself to be an expert cutter and tailor and engages himself with to provide wholtime assistants to him

AND WHEREAS Messrs . . . carrying on business as Drapers and Outfitters (or Tailors) at hereinafter called the "Firm" desire to engage an expert cutter and tailor for the purpose of canvassing customers for the purchase of cloth and other wearing apparel.

AND WHEREAS the Tailor has applied to the Firm to allow him to attend to, and perform exclusively the tailoring work at the premises of the Firm;

Now it is hereby mutually agreed between the parties :

(1) That in consideration of the firm agreeing to pay Rs. per mensem to the tailor (which expression shall include

the wholetime assistants with him) the latter covenants with the Firm to do all the tailoring work for the customers of the Firm at its premises to the entire satisfaction of the said Firm and its customers

(2) That the tailor and his assistant shall attend on all days on which and for the time during which the shop of the Firm is open whether there is any work to do or not. In the event of there being more work to do than could be accomplished during business hours the Firm may allow the tailor to do overtime work but the tailor shall not be entitled to any additional remuneration therefor

(3) That the tailor shall complete the tailoring and making of a suit or other wearing apparel for any customer within a period of fortnight at the most from the date the cloth or material is made available to the tailor. The tailor shall however be bound to complete the urgent work of a customer within the period specified by the customer and agreed to by the Firm provided such time is reasonable taking into consideration the circumstances of the case

(4) That the tailor shall arrange his own sewing machines and other instruments for the completion of the work under this agreement. The furniture thereof shall be provided by the Firm as may be necessary in this behalf

(5) That

(6) That

In witness whereof the parties hereto have set their hands this
day of 19

For and on behalf of firm

(Sd)

(Sd)

Tailor

Witness

Witness

Agreement Between A Company And A Person As To His Appointment As Company Secretary

This agreement is made this — day of — 19— between Messrs ———— (a Company incorporated under the — Act — and having its Registered Office at ——— hereinafter called the Company, which expression shall unless repugnant to the context or contrary to the meaning thereof shall include its successors

(7) That the Secretary shall not utilise any process used by the Company in its business even after the expiration of the period of the agreement, i.e. after he has left the Company, either himself or in association with others or through some one

(8) That either party hereto may terminate this agreement by giving sixty days notice in writing to the other. The Company shall be entitled to terminate the services of the Secretary by paying three months' salary and other remuneration or allowances in advance in lieu of notice of termination of his services after the period of probation if the Board of Directors are not satisfied with the work of the Secretary

Agreement Between Business man And Manager

This agreement made the——day of——between AB of —— (hereinafter called the Employer) of the one part and CD of —— (hereinafter called the Manager) of the other part—

Whereby it is agreed as under —

1 That during the term of——years from the date here of (determinable as hereinafter mentioned) the Employer will employ the Manager as the Manager of his business of——now carried on at——

2 That the Manager during the continuance of this agreement, will properly and faithfully serve the Employer in such capacity as aforesaid, and will at all times devote his whole time and attention to managing, supervising and improving the said business to the utmost of his power skill and ability and will do and perform all such acts, deeds and things connected therewith as the Employer shall, from time to time, direct and are of a kind properly belonging to the duties of a Manager

3 That the Manager will not, at any time, except under the provisions of law, divulge any matters relating to the said business of the Employer or any customer or any agent of the said business which may become known to him by reason of his employment as Manager or otherwise howsoever, save in so far as such disclosure shall be necessary in the interest of the said business and will be true and faithful to the Employer in all dealings and transactions whatsoever relating to the said business

4 That the Manager will keep or cause to be kept all files documents and papers as also all such books of accounts or other books as the Employer shall provide for that purpose and will enter or cause to be entered therein the usual accounts or particulars of all goods, articles and things bought, received and sold or delivered upon credit or otherwise in the course of the said business, and the rates and prices at which the same shall be so

bought, received sold or delivered in the course of the said business and will at all times render faithful information concerning the said business and all transactions therein to the employer and furnish him from time to time with accurate account of all business dealings and also with a duly statement of the Bank balance of the said business

5 That the said books of accounts shall be kept at the office of the said business at ——— and shall be open at all times to the inspection of the Employer and any person authorised by him in writing on his behalf

6 That all moneys received by the Manager during any week day, except such sum as shall be required to be retained as petty cash, shall if possible, be paid to the account of the Employer at —Bank on or before the close of the business hours at such Bank on the day of receipt and every payment exceeding Rs ——— made by the Manager on behalf of the said business shall be made by cheque drawn on the said account

8 That the Manager shall be entitled——days' holidays during the year at such times as the Manager shall think fit, subject to any directions given to him by the Employer

7 That the Manager shall receive the following remuneration for his services etc (state the salary and commission)

9 That during the continuance of his employment, the Manager shall not, directly or indirectly, be interested (except as a shareholder, debenture holder, or creditor of any limited liability company, whose business, does not compete with that of the Employer) in any business, trade or profession other than the business of the Employer

10 That in the event of illness of the Manager or other cause incapacitating him for attending to his duties for——consecutive weeks, the Employer may determine this agreement without notice on payment to the Manager of Rs —— in lieu of notice, in addition to all arrears of salary and commission calculated upto the date of such determination

11 That either party may determine this agreement by giving to the other——calendar months' notice in writing but without prejudice to any right or claim which may have then accrued to either of the said parties by virtue hereof

Employment of Branch Manager of a Publishing Company

This agreement is made on——day of—— at——between A B, & Company carrying on business as—— with its Head Office at——, hereinafter called the 'Company' and CD of—— hereinafter called the 'Manager',

WHEREAS the Company has opened a branch/has a branch at-----to push its sales and extend its business with particular reference to the territory of-----State and

AND WHEREAS CD aforesaid has offered his services to work as Manager of the said Branch

Now it is mutually agreed between the parties hereto as under

(1) That the Manager is employed for a period of 3 years on a salary of Rs -----per mensem plus-----per cent commission on all cash retail sales otherwise than on orders received by post

(2) That the Manager shall endeavour to personally canvass for such sales whenever possible

(3) That the Manager shall devote his whole time (business hours) for attending to the business of the Company and shall not do any other remunerative work during the business hours

(4) That the Manager shall not participate in election work for any candidate during Municipal or other election

(5) That the Manager shall keep or cause to be kept under his direct supervision regular accounts supported by appropriate vouchers of all disbursements made or expenses incurred in carrying on the business of the Company

(6) That the Manager shall execute and carry out all lawful orders and directions of the Company faithfully and honestly

(7) That the Manager shall behave very courteously towards customers and others who come in contact with him in relation to the business of the Company

(8) That the Manager shall keep the Head Office of the Company informed of all developments and requirements of customers as may be conducive to the advancement of the business of the Company

(9) That in case of persistent negligence or inefficient work of the Manager the Company may terminate this agreement by giving one month's notice to the Manager

In witness where of

CHARGESHEET AND MODE OF SERVING IT ON THE WORKMAN

The object of a charge sheet is to give an opportunity to the person who is charged with misconduct to submit an explanation and defend himself. The rule of natural justice requires that a person charged with an offence should know precisely the nature of such offence so that he may be able to offer his explanation about it and prove his innocence in the matter.

If after preliminary enquiry the Management is satisfied that an act of misconduct has been committed by a workman which act calls for disciplinary action a charge sheet is issued to the workman calling for his explanation within a specified period of time, which should be reasonable having due regard to the facts of the case, usually within 24 hours or 48 hours of the receipt of the charge-sheet. It should also be stated in the charge sheet that if the explanation given by the workman is found unsatisfactory and on enquiry he is found guilty of the alleged misconduct, he should show cause why he should not be punished for the misconduct. This is sometimes termed as show cause notice.

The Charge-sheet may also make a mention as dismissal as a punishment for the alleged misconduct because more severe punishment than one mentioned in the charge sheet cannot be inflicted. It is always open to the Management to award any punishment other than the extreme punishment of dismissal.

The essential ingredients of a chargesheet are as follows

(1) The Charge sheet must be specific and must set out all the necessary particulars. It is no excuse to say that regard being had to the previous proceedings, the delinquent should be taken to have known all about the charges.

(2) The allegations should not be vague. Where a Workman was given a Charge-sheet that he had shown a higher percentage of driage at his centre than elsewhere and that in case he failed to give a satisfactory explanation he would be presumed to have done smuggling in the purchase of cane but after his explanation he was dismissed for another misconduct, namely preparing bogus purchase, it was held. It would be very wrong to make vague accusation in the charge-sheet which the workman could not possibly follow and then to dismiss him on a specific charge not given in the charge-

sheet" *Modi Sugar Mills LTD v, Mazdoor Sabha* (1952-53) FJR 219 L A T

3. Service Rules of a concern or Standing Orders of an industrial establishment usually enumerate acts or omissions, which constitute misconduct. If an act or an omission by a workman complained of falls within one of these, so far as practicable, the same phraseology should be used in the charge-sheet. Although an omission to refer to Standing Orders in the charge-sheet does not make the charge-sheet vague, nor does the omission of serial number of the relevant Standing Orders make the charge-sheet irregular, but whether the act or omission constituting misconduct is as per the Standing Orders or otherwise, it should be stated precisely and accurately in the charge-sheet and the particulars given should be sufficient enough to enable the workman concerned to know what exactly is the charge against him, e.g. "insubordination".

4. The charge-sheet must be signed by competent and authorised person. Usually the competent authority has the Manager who is also the competent authority to inflict the punishment, or any other officer of the Company may be authorised to sign it.

5. If a workman has not already been suspended for his alleged misconduct, and it appears necessary to the Management to suspend him at this stage, the order of suspension also is included in the charge-sheet or "show-cause" notice.

6. Before dismissing a workman, a regular charge-sheet has to be served upon him, an opportunity is to be given to him for explanation and an enquiry has to be held. The fact that his attention was drawn from time to time to certain faults, alleged to have been committed by him and warnings were given to him can by no means take the place of regular enquiry which should be taken before terminating the services of an employee.

Serving of Chargesheet

Standing Orders of an industrial establishment generally provide for the mode of serving a chargesheet on the workman concerned and where one is prescribed it should be invariably followed.

It sometimes happens that employees charged with misconduct refuse to accept the charge-sheet. In such cases following procedure should be followed —

In a case, the court observed "If the two workmen had refused to accept the charge-sheet when tendered to them by hand, it was the bounden duty of the company to send those chargesheets by registered post, (acknowledgement due) and after, waiting for the period as specified in the charge-sheets for the explanations, to hold an

enquiry into the charges levelled against the workmen concerned and if satisfied, to order their dismissal according to particular Standing Order. This has not been done with the result that the workmen concerned were deprived of the opportunity of defending themselves.

If registered letters containing the chargesheet sent to the addresses of the industrial workmen are returned undelivered, it is necessary to publish a notice in a local newspaper in the regional language, with a wide circulation, containing the names of all the workmen against whom action is proposed to be taken, and the charges framed against them. It is not enough to display the chargesheets on the notice board of the company."

When a workman is summoned personally in the presence of at least two witnesses by the competent authority to receive the chargesheet, and he takes it but refuses to sign or thumbmark the duplicate in token of having received the same, an endorsement to that effect should be made by the competent authority on the duplicate copy of the charge-sheet and it should be witnessed by two witnesses.

Misconduct and Disciplinary Action in Employment

The growth of labour laws has highlighted the importance of misconduct in employment. Misconduct means bad conduct or wrong or improper conduct, i.e. conduct in violation of a definite rule of action. The ordinary meanings of misconduct are the failure to do what is required of a person to be done. Misconduct is also defined as wrong conduct, bad behaviour, mismanagement, misdeed, delinquency, offence. Gone are the days when the employer could terminate the services of an employee on giving notice or wages in lieu of notice. The recent enactments have curtailed the rights of the employer in terminating the services of an employee. It has become very necessary to find out whether an employee is or is not guilty of misconduct. From the point of view of employee as well, the decision of misconduct has assumed greater importance. In olden days there were no retiring benefits and there were no stakes in service, the termination of the services meant little to him. But now the economic impact of dismissal on the employee is considerable. He has to forego the gratuity and other retiring benefits in case of dismissal alongwith the difficulty of procuring a new employment. Thus, the employee has acquired considerable stakes in defending himself against the charge of misconduct. The employer has also a stake in the sense that if the charge of misconduct fails and he is required to pay the back wages, then the amounts are generally considerable. Hence, a proper determination of the commission of misconduct has assumed considerable importance and this importance is still increasing day-by-day.

So far as what constitutes misconduct on part of the employees in industrial undertakings is concerned, proper guidance is, however,

available from the Model Standing Orders or Standard Standing Orders framed as a part of the Rules made under the Madhya Pradesh Industrial Employment (Standing Orders) Act, 1961. These are noted below.

Para 14 (3) of Schedule I to the Industrial Employment (Standing Orders) Central Rules, 1946 relating to the Model Standing Orders, prescribes the following acts and omissions shall be treated as misconduct —

(a) Wilful insubordination or disobedience whether alone or in combination with others, to any lawful and reasonable order of a superior,

(b) theft, fraud or dishonesty in connection with the employer's business or property,

(c) wilful damage to or loss of employer's goods or property,

(d) taking or giving bribes or any illegal gratification,

(e) habitual absence without leave or absence without leave for more than 10 days,

(f) habitual negligence or neglect of work,

(g) habitual breach of any law applicable to the establishment,

(h) riotous or disorderly behaviour during working hours at the establishment or any act subversive of discipline,

(i) frequent repetition of any act or omission for which a fine may be imposed to a maximum of 2 per cent of the wages in a month,

(j) striking work or inciting others to strike work in contravention of the provisions of any law, or rule having the force of law.

Para 21 of Schedule I to the Bombay Industrial Employment (Standing Orders) Rules, 1948, relating to the Model Standing Orders similarly lays down,

The following acts and omissions on the part of a workman shall amount to misconduct. —

(a) wilful insubordination or disobedience, whether or not in combination with another, of any lawful and reasonable order of a superior,

(b) going on an illegal strike or abetting, inciting, instigating or acting in furtherance thereof,

(c) wilful slowing down in performance of work, or abetment or instigation thereof,

(d) theft, fraud or dishonesty in connection with the employer's business or property

(e) taking or giving bribe or any illegal gratification,

(f) habitual absence without leave, or absence without leave for more than ten consecutive days or overstaying the sanctioned leave without sufficient grounds or proper or satisfactory explanation

(g) late attendance on not less than four occasions within a month

(h) habitual breach of any Standing Order or any law applicable to the establishment or any rules made thereunder,

(i) collection without the permission of the Manager of any money within the premises of the establishment except as sanctioned by any law for the time being in force,

(j) engaging in trade within the premises of the establishment

(k) drunkenness, riotous, disorderly or indecent behaviour on the premises of the establishment

(l) commission of any act subversive of discipline or good behaviour on the premises of the establishment,

(m) habitual neglect of work, or gross negligence ,

(n) habitual breach of any rules or instructions for the maintenance and running of any department, or the maintenance of the cleanliness of any portion of the establishment,

(o) frequent repetition of any act or omission for which a fine may be imposed under the Payment of Wages Act, 1936,

(p) canvassing for union membership or the collection of union dues within the premises of the establishment, except in accordance with any law or with the permission of the Manager;

(q) causing wilful damage to works in process or to any property of the establishment,

(r) holding meetings inside the premises of the establishment without the previous permission of the Manager or except in accordance with the provisions of any law for the time being in force,

(s) disclosing to any unauthorised person any information in regard to the processes of the establishment which may come into the possession of the workman in the course of his work,

(t) gambling within the premises of the establishment,

(u) smoking or spitting on the premises of the establishment where it is prohibited by the employer

(v) failure to observe safety instructions notified by the employer or interference with any safety device or equipment installed within the establishment,

(w) distribution or exhibiting within the premises of the establishment hand-bills, pamphlets, posters and such other things or causing to be displaced by means of signs or other visible representation on any matter without previous sanction of the Manager

(x) refusal to accept a charge-sheet, order or/other communication served in accordance with, these Standing Orders,

(y) unauthorised possession of any lethal weapon in the establishment

The above enumeration is not exhaustive as from its very nature it cannot be exhaustive and every act or omission on the part of an employee is to be judged according to exigency of the situation

The Division Bench of the Gujrat High Court, while referring to the general principles relating to an employer and employee has made the following observations in the case of *J J Mody v State of Bombay* (A I R, 1962 Gujrat 197) A master is entitled to dismiss his servant for various reasons and some of them are as follows

(i) where the act or conduct of the servant is prejudicial or likely to be prejudicial to the interests of the master or to the reputation of the master,

(ii) where the act or conduct of a servant is inconsistent or incompatible with the due or peaceful discharge of his duty to his master,

(iii) where the act or conduct of a servant is so grossly immoral that all reasonable persons will say that the employee cannot be trusted

(iv) where the act of a servant makes it unsafe for the employer to retain him in service,

(v) where the act or conduct of the employee is such that the master cannot rely on the faithfulness of his employee,

(vi) where the act of the employee is such as to open before him temptation for not discharging his duties properly,

(vii) where the servant is abusive or disturbs the peace at the place of his employment,

(viii) where the servant is insulting and insubordinate to such a degree as to be incompatible with the continuance of the relation of master and servant,

(ix) where the servant is habitually negligent in respect of the duties for which he is engaged, and

(x) where the neglect of the servant though isolated, tends to cause serious consequences

No 1

Chargesheet

To

It has been reported against you that on _____ at _____ you
(mention clearly the act or acts of misconduct alleged)

The acts as above alleged to have been committed by you amount to misconduct which, if proved, would warrant serious disciplinary action against you

Accordingly you are hereby required to show cause within (herein mention time) days of the receipts hereof as to why you should not be dismissed or otherwise punished

Should you fail to submit your explanation within the stipulated period it will be presumed that you have no explanation to offer and the matter will be disposed of without any further reference to you

Since the charge levelled against you is of grave and serious nature you are hereby suspended pending final orders in the matter,

(Employer/authorised person),

Dated

No 2

Chargesheet

Name of the worker

You are reported to have committed the following acts on _____
at _____

(Exact nature of the charges should be precisely mentioned along-with the time and date)

(1) Herein mention the charges

(2)

The above mentioned charges constitute misconduct under ¹Stand

ing Orders No _____ for which the chargesheet is issued. You are required to show cause by _____ as to why disciplinary action be not taken against you.

If you fail to submit your explanation within the specified time it shall be presumed that you accept the charges to be correct and you have no explanation to offer in your defence and the Management can take any appropriate action without further reference to you.

You are hereby suspended from service with immediate effect pending enquiry into the alleged misconduct against you.

Manager

No 3

Model Chargesheet for absence from duties

To

You have been absent from duty w e f—without prior permission or even an intimation. This absence has dislocated and adversely affected the work of the establishment and constitutes a serious misconduct on your part.

You are hereby required to submit your explanation within 48 hours of the receipt of this communication. If you fail to submit your explanation within the prescribed period it will be presumed that you have no explanation to offer and admit the charge as true. The management will be at liberty to take appropriate action without any further reference to you.

You are hereby suspended from duties with immediate effect pending enquiry into alleged misconduct against you.

No 4

Chargesheet for habitual absence

You are guilty of habitual absence from duty without obtaining leave. On _____ you remained absent without leave being granted to you. Prior to this also you remained absent without taking leave on numerous occasions as shown below —

Herein Mention the days of the month on which the workman remained absent without taking leave (Last para as per Model chargesheet No, 1 and 2)

No. 5

Absence from duty without sanction of leave

On..... you applied for leave from

which was not granted to you from on account of exigencies of work. In spite of this you absented without leave during the aforesaid period which constitutes a misconduct vide Standing Order No. (As per last para of Model chargesheet No. 1 and 2.

No. 6

Charge-sheet for non-performance of duties

It is reported against you as under .

- (a) That (herein mention the job) was assigned to you but in spite of the same you failed to perform it on . and/or thereafter
- (b) That (job) was your duty and you have been doing the same in the past, but in spite of the same you have failed to perform it on . and/or thereafter.
- (c) That on you did which was not a part of your duty and which you were not authorised to do.
- (d) That on you did which was a prohibited act by Order No. of and/or by (name of statute).

The above acts/omissions on your part are grave and serious and make you liable for serious disciplinary action. You are hereby directed to submit your explanation within 48 hours from the receipt-hereof and should you fail to submit your explanation within the stipulated period it will be deemed that you admit the charge and have no explanation to offer.

No. 7

Chargesheet for Stopping work

To

Dear Sir,

That on . . . (date) at (time) you along with other workers stopped work in a pre-planned manner and went on a strike. The said strike constitutes misconduct under the Standing Orders/Service Rules

P. G. SECTION

To

Dear Sir,

It has been reported against you —

1 That on (dated) at (time) you along with other co-workers stopped work suddenly in concert with other workers and went on a strike. The said strike is illegal because (give reasons). Resorting to an illegal strike is a misconduct under the Standing Orders/or Service Rules of the Concern.

No 9

Chargesheet for Loitering during duty hours

(1) That you are habituated to loiter in the department and waste time without doing any work during your duty hours. On (date) you left your seat/machine and went to the seat/machine of Shri and indulged in chit-chatting or doing (herein mention the particulars of act done) during duty hours. In the past also you were found guilty of loitering in the department and wasting time during working hours on the following occasions —

<i>Sl No</i>	<i>Date</i>	<i>Time when he was found loitering</i>
1		
2		
3		
4.		

No 10

That on at you left your machine running and absented from to On account of your absence the production of the machine became defective by (quantity of defective production) (or the machine was damaged).

No 11

Chargesheet for Late Coming

That you have been working on (post) and your duty is of such a nature that if you come late to join your duty then it causes dislocation of work by (give particulars)

No. 12

Chargesheet for Sleeping While on Duty

According to complaint/or you were detected/or found sleeping while on duty and it transpires that you are habituated to sleep during your duty hours, On (date)———at———(hours) you were found sleeping during duty hours from———to——— In the past also you were found sleeping during your duty hours on the following occasions

(Here in mention the time and days)

Now, therefore, show cause etc etc

No. 13

Chargesheet for adopting 'go slow' tactics

From

To

Ticket No.

Department

Dear Sir,

The supervisor/incharge of your Department has made a complaint against you, the details of which are given below .—

Despite warning issued to you, you did not complete the work assigned to you You could not give the output, the average of which is fixed Whenever you were directed to expedite the work as assigned, you did not care at all Rather you allowed to slow down the speed of the work The work during the last week fell short by (here mention the percentage below the average work)

The abovedetails clearly prove that you have been intentionally acting in such a manner and adopting 'go slow' tactics You are afforded an opportunity to submit your explanation within 48 hours from the date of receipt of this communication as to why disciplinary action should not be taken against you In case you fail to submit your explanation within the stipulated period, the Management shall presume that the charges are accepted by you and the Management shall take appropriate action against you

Yours faithfully,

No. 14**Chargesheet for Leaving Before Time**

On your duty hours were from to but it was found that you had left your duty earlier at without permission or intimation to your superior officers.

In the past also you were found guilty of leaving the work earlier on the following occasions

Sl. No.	Date when left earlier	Herein mention the time and dates when the employee left earlier.
---------	------------------------	---

- 1.
- 2.
- 3.
- 4.

No. 15**Chargesheet for Overstaying Leave**

That you went on leave duly granted from to Subsequently you overstayed the leave without permission and remained absent from to without leave. You are hereby called upon to show cause as to why you should not be proceeded against according to rules.

No. 16**Chargesheet for Misrepresentation to Obtain Leave**

On you applied for leave from to on the ground of (mention the specific ground). The said leave was granted to you but it was subsequently found that the grounds on which the leave was applied for were false and that you had secured leave on misrepresentation and false pretences.

No. 17**Chargesheet to a Watchman for sleeping during duty Hours**

That you are engaged as a Watchman in the establishment/factory. On you were found sleeping from to during your duty hours, which is a serious misconduct.

No. 18**Chargesheet to a workman found drunk while on duty**

On (date) .. at. (time) . while you were on duty, it was observed that you were intoxicated and were badly

under the influence of liquor which was exhibited by, (give the outward symptoms which showed that the worker was drunk) and you were not able to perform your duties

No 19

Chargesheet to a Storekeeper for not Arranging the Material Properly

You have been working as a Store Keeper The store was checked on at by Shri and it was found that various items in the stores were not kept in order The particulars of the same are as under —

(Herein give the details)

It was also found on checking at that time that the goods lying in the stores did not tally with the stock according to accounts The particulars of such discrepancies are as under —

Sl	No.	Details of material	Stock according to books	Excess or shortage.
	1.	2	3	4
	1.			
	2.			
	3			

No. 20

Chargesheet for Strike Resorted to During the Pendency of an Industrial Dispute

To

Dear Sir,

It has been reported against you —

(1) That on———(date)———at———(time) you, along with other workers of the Factory, stopped the work in a pre-planned manner and went on strike which was illegal because of the pendency of an industrial dispute before the Industrial Tribunal/ Labour Court, a reference where of was made by the State Government vide Notification No —— dated —— and hence your resorting to strike during the dispute being sub judice the strike is illegal under the Industrial Disputes Act

(2) That there are reasons to believe that you also incited other workers to take part in the strike, and/or coerced.

- (3) That you took a leading part in the said strike and/or
- (4) That you intimidated/abused the loyal workers

No. 21

Chargesheet for Strike During the Subsistence of a Settlement

To

Dear Sir,

It is reported against you

1 That on———(date)———at (time) you along with other workers stopped the work jointly and went on a strike in support of the demands as contained in demand letter No ——— dated———addressed through the labour union. The demands are already covered by a subsisting award dated——— passed by the Industrial Tribunal/Labour Court/or settlement dated ——between the parties.

(ii) You also took a leading part in organising the strike or in inciting the workers by doing———and/or the strike was also unjustified on account of (give reasons)

No. 22

Chargesheet for Strike During the Pendency of Conciliation Proceedings

To

Dear Sir,

It has been reported against you as under :—

1 That on —— (dated) at —— (time) you along with other workers in a pre-planned manner suddenly stopped the work and resorted to an unjustified strike. The strike was unjustified on *inter alia*, the following grounds —

- i) There was no justification for the demands and/or
- ii) The demands were duly covered by the subsisting award settlement and/or
- iii) The strike was launched in undue haste and without giving any notice of the alleged demands before going on strike, and/or

- iv) The decision to go on strike was taken without awaiting the results of the negotiations/conciliations going on between the parties and/or
- v) The strike was resorted to inspite of the fact that the Management was willing to refer the demands to arbitration/voluntary adjudication

The strike was not *bona fide* because

The other reason may be stated

No. 23

Chargesheet for Strike in Public Utility Service

To _____

Dear Sir,

It has been reported to us as follows —

- 1 That on———(date)———at———(time) —— you alongwith other co workers of the factory stopped work suddenly in a pre-planned manner and went on a sudden strike
- 1 The factory has been declared as a 'Public Utility concern' under the Provisions of the Industrial Disputes Act/or under State Government Notification No ——dated —— and you resorted to strike without giving any notice as required under the law or although the notice was given it did not fulfil the requirements of law, because (here give the reasons)

In view of the circumstances stated above, not only you yourself went on an illegal strike, but also instigated and coerced other workers to take part in the said illegal strike or you were thus guilty of taking a leading part in the Strike/and/or stopping, intimidating or abusing the loyal workers on———(date)

ENQUIRY

Domestic Enquiry, its Essentials

Although the domestic enquiry need not be conducted in accordance with the technical requirements of a criminal trial but they must be fairly conducted, and in holding them considerations of fair play and natural justice must govern the conduct of the enquiry officer. It is also essential that these enquiries are conducted honestly and bonafide with a view to determine whether the charge-sheet framed against the workman is proved or not, and so care must be taken to see that these enquiries do not become empty formalities.

In *Sur Enamel and Stamping Works Ltd v Their workmen* (AIR 1963 SC 1914) the Supreme Court has held that an enquiry cannot be said to have been properly held unless —

- (i) the employee proceeded against has been informed clearly of the charge levelled against him ,
- (ii) the witnesses are examined in the presence of the employee in respect of the charges
- (iii) the employee is given a fair opportunity to cross examine witnesses ,
- (iv) he is given a fair opportunity to put up his defence by examining defence witnesses, including himself, if he so wishes , and
- (v) the enquiry officer records his findings with reasons for the same in his report

For the sake of convenience, the important and basic points are as follows —

- (i) The enquiry should not begin with a cross examination of the workman concerned except where the accusation is based on a matter of record or the facts are admitted by him or he himself wishes that he should be examined first. It is always advisable to examine in writing the workman proceeded against as to whether he would like to make any statement first or to wait till the evidence against him is over

- (ii) Oral evidence of all the witnesses on behalf of the management to prove the charge should be recorded one by one and not in the presence of the witness whose evidence yet remains to be recorded. The employee concerned should be given opportunity to cross-examine each witness after his statement has been recorded. If the employee requests for supply of copy of the statement of any witness recorded at preliminary enquiry, it should be given to him for he may have to use it for purposes of cross-examination.
- (iii) If any document is to be produced by the management through a witness or otherwise to prove the charge, the same should be read over to the employee proceeded against and a copy of the same should be supplied to him on his request, as he may require it for cross-examining the witness producing it. If the delinquent calls for any document to be produced by him in his defence, a copy of the same should be supplied to him.
- (iv) If it is proposed to file the past record of service of the delinquent, the same should be read over to him in his presence or he may be allowed inspection of it and permitted to take relevant extracts from the same, or if he requests for a copy of the relevant extracts from it, the same should be supplied to him.
- (v) When all the evidence, oral as well as documentary, has been recorded, the delinquent should be given opportunity to enter on his defence. The Management has got the right to cross-examine the employee concerned also if he produces himself in his own defence.
- (vi) The same principles as govern the evidence on behalf of the management shall govern the evidence to be produced by the employee in his defence. If he calls for any document in the custody of management in his defence, the same should be produced and it should be read over to him and a copy of it placed on the file. The management has also got the right to cross-examine the witness produced by the employee in his defence.
- (vii) The enquiry should ordinarily be conducted in the language which the employee understands. If it is conducted in English or in any other language which the employee does not understand, an interpreter should be made available by the management to assist the employee in the proceedings.

- (viii) It is not essential that enquiry must be conducted strictly in accordance with the provisions of the Indian Evidence Act, 1872, or of the Code of Criminal Procedure, 1898, or of the Code of Civil Procedure, 1908. Any relevant material bearing on the subject may be brought on the file and taken notice of, subject to the condition that the employee concerned should have full knowledge of the same and he is afforded opportunity to explain it or if necessary to contradict it. Nothing should be done behind the back of the employee so that he may not be prejudiced in any manner.
- (ix) Ordinarily, the employee charged against brings his own witnesses personally to give evidence in his defence. But some times he insists that he wants to produce a witness in his defence whom he cannot bring personally and requests the Enquiry Officer to secure his presence. If such a witness is under the control of the management so that it can produce him, it should do so, but if he is not under its control, it has no power to compel his attendance to give evidence and the enquiry will not be vitiated for want of evidence of such a witness.
- (x) Copies of all proceedings of the enquiry should be supplied to the employee concerned.
- (xi) when the statement of any witness has been recorded, he should be asked to sign his deposition, or if he is illiterate, to thumb mark it. If the witness is not familiar with the language in which his statements has been recorded, the interpreter should make an endorsement to the effect that the statement as recorded was interpreted to the witness and was accepted by him as correct, and that it was done so accepted by him as correct, and that presence of the employee concerned. The endorsement should be signed by the interpreter.
- (xii) if the delinquent, in spite of proper service of notice of enquiry, non co operates and refuses to take part in the proceedings relating to enquiry, the same should proceed ex parte and all evidence whether oral or documentary, should be produced before the Enquiry Officer.
- (xiii) Reasonable adjournments may be allowed by the Enquiry Officer on the request of the employee charged against, so that in no way he is prejudiced regarding the proceedings against him. But all dilatory tactics on the part of the employee should be discouraged, and the Enquiry officer should see that the domestic enquiry is

completed in as short a time as possible, without, of course, prejudicing the employee in any way

Notice of enquiry by the management to the charge sheeted Workman

To

Dear Sir,

Your explanation dated _____ in reply to the charge sheet dated _____ has been found to be unsatisfactory

Or

As you have failed to submit your explanation in reply to the charge sheet dated _____ issued to you, it is presumed that you have no defence to offer (in view of your unsatisfactory explanation) it has been decided to hold a formal enquiry into the charges levelled against you and Shri _____ (here give the name and designation) has been appointed to hold the enquiry

You are hereby advised to present yourself before the said Enquiry Officer at _____ (place) at _____ A M / P M on _____ (date) for the purpose of the said enquiry

At the enquiry, you shall be given full opportunity to conduct your defence by examining your witnesses and cross examining the Company's witnesses

Please take notice that the relevant papers have been sent to the Enquiry Officer which can be inspected in his presence or in the presence of a person authorised by him in this behalf

Should you fail to present yourself at the enquiry as advised it shall be deemed that you do not intend to participate in the enquiry and the proceedings will be held ex parte, which please note

Employer/authorised person

Dated

Notice of holding domestic enquiry into illegal strike

The following workmen of M/s _____ are hereby informed that they have been charge sheeted vide letters dated _____ sent individually to them by Registered Post with A D at their last recorded addresses

The afore said workmen have subsequently been suspended pending enquiry and final disposal of their cases vide Management

Notice dated _____ copies whereof were sent to the individual workmen concerned by Registered Post with A D and a copy of the same was placed on the Notice Board of the Management

The following workmen had requested for the postponement of the enquiry or due to certain other unavoidable reasons the enquiry could not be completed in their cases —

That the following workmen were informed on _____ that enquiries in their cases will be held on different dates commencing from _____ as the enquiry proceedings were to be placed before the Arbitrator to enable him to decide the issue in question. An objection was raised by the Union and the Management after due consideration came to the conclusion that the domestic enquiry into their cases has to be completed by Management itself and accordingly intimation for enquiry was sent to them by Registered Post with A D on _____ for holding the enquiry from _____ and on wards —

As most of these letters have been received back to the Management with different remarks viz address-es left not known, returned etc the workmen concerned are informed as under —

That they have been charge sheeted for their alleged acts of misconduct under the certified Standing Orders of the Management as mentioned and shown against their respective names

That those of the concerned workmen who have not yet received the said charge sheet and/or who have not yet submitted their explanations thereto are required to submit their explanations in regard to the said charges within three days of the publication hereof. Should they fail to so submit their explanation it will be deemed that they have no explanations to offer

These workmen are further informed that domestic enquiry into their cases will be conducted on the date and time mentioned against their respective names at _____ and they are required to present themselves to defend their cases together with their defence evidence if any. Should they fail to so present themselves at the enquiry the same will be conducted in their absence

Intimation for holding enquiry into the conduct of workmen

Sl No	Name	Badge No	Enumeration of Charges levelled	Enquiry Date time
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Notice of Holding Domestic Enquiry into illegal strike

The following workmen of M/s _____ are hereby informed that they have been charge sheeted vide letters dated _____ sent

individually to them by registered post with A D at their last recorded addresses

The aforesaid workmen have subsequently been suspended pending enquiry and final disposal of their cases vide Management Notice dated _____ copies whereof were sent to the individual workmen concerned by Registered Post with A D and a copy of the same was placed on the Notice Board of the Management

The following workmen had requested for the postponement of the enquiry (or due to certain other unavoidable reasons) the enquiry could not be completed in their cases —

That the following workmen were informed on _____ that enquiries in their cases will be held on different dates commencing from _____ as the enquiry proceedings were to be placed before the Arbitrator to enable him to decide the issue in question. An objection was raised by the Union and the Management, after due consideration came to the conclusion that the domestic enquiry into their cases has to be completed by Management itself and accordingly intimation for enquiry was sent to them by Registered Post with A D on _____ for holding the enquiry from _____ and on wards —

At most of these letters have been received back to the Management with different remarks, viz addresses left not known, returned etc the workmen concerned are informed as under —

That they have been charge sheeted for their alleged acts of misconduct under the certified Standing Orders of this Management as mentioned and shown against their respective names

That those of the concerned workmen who have not yet received the said charge sheet and/or who have not yet submitted their explanations thereto, are required to submit their explanations in regard to the said charges within three days of the publication hereof. Should they fail to so submit their explanation it will be deemed that they have no explanations to offer

These workmen are further informed that domestic enquiry into their cases will be conducted on the date and time mentioned against their respective names at _____ and they are required to present themselves to defend their cases together with their

defence evidence, if any Should they fail to so present themselves at the enquiry the same will be conducted in their absence

Intimation for holding enquiry into the conduct of workmen

Sl No	Name	Badge No	Enumeration of Charges levelled	Enquiry Date	Time
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Appointment Letter to an Enquiry Officer

From

To

Dear Sir

There is a complaint against the workman (give the name and address of the workman) and it has been found necessary to hold enquiry into the misconducts alleged under Standing Order No as enumerated in the charge sheet dt

You will enquire into the complaint against the workman aforesaid *duly during office hours and complete your enquiry by the* and submit the necessary report immediately thereafter to the undersigned The complaint and other necessary papers are herewith sent You are also requested to keep in safe custody the record of all the proceedings of the enquiry The report of the said enquiry must accompany the order sheet On the order sheet you will take the signatures of the workman if any information is given to him personally Accordingly you are hereby authorised to conduct the enquiry into the complaint against the workman

All the persons concerned including witnesses and the Management's representatives are hereby informed accordingly

Yours faithfully,

Suspension Order Pending Enquiry

Date

Name of worker/Employee

Ticket No if any

Department

Where as the Management has levelled charges of gross misconduct and indiscipline against you under Rule No of the

Factory/Company's Rules and Regulations as per charge sheet dated
sent to you

In order to conduct a proper enquiry against you and in order to maintain proper discipline in the concern/Factory you are here by suspended from your services with effect from under Clause of the Factory/Company's Rules pending enquiry against you

You will be entitled to receive a subsistence allowance of Rs during the period of suspension

You are further required to report your self daily at (hour) at (place) to the undersigned to receive orders and directions and communications intended for you

(Signature of General Manager)

Employee/Factory Manager

Notice by Enquiry Officer to the charge sheeted workman informing him of the time date and venue of enquiry

From

(Enquiry Officer)

To

(concerned workman)

This has reference to the letter of the Management of where in I have been appointed as an enquiry officer to hold enquiry into the acts of misconducts committed by you vide charge sheet No dt

The enquiry will be held by me on and on further dates found to be necessary, dates where of will be intimated to you in advance. The enquiry will be conducted daily from the aforesaid date between hours and hours. As such you are hereby informed to present yourself on the dates fixed for the purpose between the said hour at (herein mention the place of enquiry). You are informed that you can bring with you any co worker as your representative to assist you in the enquiry proceedings if you so wish. If you intend to cross examine the witnesses which will be examined against you you will be given full opportunity. So you are hereby informed to keep ready any documentary evidence which you will be relying upon in the cross examination. If the said documents are with the Management you should intimate

the undersigned two days prior to the holding of the enquiry *if will be made available to you

You are also informed that if you fail to present yourself at the enquiry on any date the enquiry will be conducted and completed in your absence and the decision and the report will be submitted to the Management on the basis of the record and evidence available

Enquiry Officer

Procedure of Enquiry Sheet

Enquiry into the conduct of Shri

Designation

Date

Name of Enquiry Officer

Name of the representative of the workman (if any)

Name of the observer if desired by the workman

Name of the representative of the Management

(The Enquiry Officer after reading out the allegations to the workman should put the following questions)

Q Do you admit these allegation ?

Answer

If the workman admits the allegations and does not want that the enquiry may be proceeded further the Enquiry Officer will submit his report. On the other hand if the workman declines to admit the allegations and claims further proceedings of the enquiry the Enquiry Officer should proceed with the enquiry

The past conduct of the workman should not be considered as relevant unless the worker offers it as a defence. A copy of the report should also be furnished to the worker

We find from the proceedings of the enquiry that full opportunity was given to you for conducting your defence at the enquiry by examining your witnesses and cross-examining Management's witnesses and that you fully participated in the enquiry

Or

*We find from the proceedings of the enquiry that in spite of full opportunity having been given to you for being present at the enquiry, you did not show up at the enquiry. Therefore, the enquiry had to be held ex-parte

We have carefully gone through the records of the enquiry, the connected papers and documents and findings of Enquiry Officer and concur with his findings that on the evidence recorded at the enquiry the charges levelled against you have been sufficiently proved (if all the charges are not proved, state those which are proved)

The charges levelled and proved against you at the enquiry being grave and serious, the punishment warranted is that of dismissal

We have looked into past record of your service with us with a view to finding if there are any extenuating circumstances. We regret to find there are none (on the contrary we find that your record is unclean in that)

In the circumstances it has been decided to dismiss you from service.

Accordingly you are hereby dismissed from service with effect from the date of this letter. You may collect your final settlement dues from the office of the Company at any time on or any other working day during office hours

Or

*However, since proceedings relating to an industrial dispute are pending before whose prior permission is necessary for implementing our decision to dismiss you, an application for the necessary permission has been made before the said authority

In the meantime pending permission of the said authority and final orders you are suspended with effect from the service of this letter.

Accordingly you are hereby dismissed from service with effect from the date of this letter you are also advised that since proceedings relating to an industrial dispute are pending before an application for approval of the action taken by us against you being made before the said authority and further that along with the letter

*delete which ever is inappropriate

you are being paid a month's wages in accordance with section 33 of the Industrial Disputes Act your other dues may be collected by you from the office anytime on or on any other working day during office hours

Dated

(Employer/Authorised Person)

Notice of dismissal/discharge during the pendency of an industrial dispute where the workman is neither connected with the original dispute nor is he a protected workman

(Name of the factory/Company etc)

Reference

Date

Shri

Ticket No

Department

Dear Sir,

Where as the charge sheet No dated in respect of your misconduct was served on you on an enquiry was held by Shri Enquiry Officer in your presence exparte After affording you full opportunity to defend yourself, the Enquiry officer found charges No, proved against you

After perusal of the record of your case and the report of the Enquiry Officer and after giving my thorough consideration the entire facts and circumstances of the committal of the charges stand proved against you, the punishment for which is dismissal/discharge under the standing orders and the Rules of the Factory/Company,

Accordingly you are here by dismissed/discharged from service with immediate effect

An application for approval of your dismissal has been made before Concilation Officer/Industrial Tribunal/Labour Court under Section 33(2) of the Industrial Dispute Act, 1947

One month's pay in respect of salary wages as required under section 33(2) (b) of the said Act has been paid to you to day/has been sent/remitted to you on

yours faithfully,

Notice of dismissal/discharge during the pendency of an industrial dispute and the misconduct of the workman is connected with the original dispute and the workman is a protected workman

(Name of the Factory/Company etc)

No

Date

Shri

s/o Shri

Ticket No

Department

Dear Sir,

Where as the charge sheet No Dated in respect of your misconduct was served on you on and enquiry was also held by shri Enquiry officer in your presence exparte and after affording you full opportunity to defend yourself, the Enquiry Officer found charges Nos proved against you

After perusal of the enquiry proceedings and the report of the Enquiry Officer and after giving our thorough and careful consideration to the entire facts and circumstances of the case, the charges stand proved against you, the punishment for which is dismissal/discharge under the standing orders and rules of the Company/Factory/Establishment and accordingly you are liable to be dismissed from service

Since dispute is pending before the Conciliation Officer/Industrial Tribunal/Labour Court and your misconduct is connected with the original dispute an application under section of the Industrial Disputes Act 1947 for permission for your dismissal has been filed

You are here by suspended from service pending permission from the authorities concerned

Yours faithfully,

Application for approval of dismissal/discharge of workman before Conciliation Officer/Industrial Tribunal/Labour Court

(Name of the Factory/Company etc)

Application under section 32(2) of the Industrial Disputes Acts, 1947,

In the matter of reference No

Sir,

It is submitted that Shri son of ticket No
 Department committed acts of misconduct
 (Here in mention the nature and description briefly)

Accordingly after holding a proper enquiry after affording full
opportunity to the employee/workman to defend himself the Factory/
 Company has dismissed/discharged the employee workman concern
 ed and one month s salary (or wages) as provided under section
 33-2(b) of the Industrial Disputes Act, 1947 has been paid/remitted
 to him on

It is therefore prayed that the necessary approval may be
 granted

Signature of Manager/General/Manager
 (Appointing Authority)

WARNING.

Warning of Notice General

Name

Department

Ticket No

NATURE OF VIOLATION

REMARKS

Defective Work

Safety

Misbehaviour

Late arrival on duty

Absence

Attitude

Disobedience

Carelessness

Disregard of any rule or instruction or practice prevalent

Shabby and untidy appearance

Wearing any unauthorised badge or insignia while on duty

days leave without pay Brief reason incase of refusal.

Signature of authority

Noted

Dated 197

Signature or thumb impression of the applicant

Warning to an Employee for absence without obtaining Leave

(Name of Factory/Company etc.)

No

Dated

Son of

Son of

Ticket No

Department

It has been reported that you absented yourself from duty and

responsibilities without obtaining leave or even applying for it. A serious view has to be taken of such lapses which tell adversely on the normal working of the establishment.

Again this is not the only instance of such a lapse on your part. You have been reprimanded for similar lapse in the past according to your service record.

You have committed a great irregularity whereby you have made yourself liable for disciplinary action. In consideration of your long association with our firm establishment you are hereby warned that you must be more careful and if on any future occasion you are found committing similar lapses the Management will have no other alternative but to take appropriate disciplinary action against you.

Second Warning Letter

(Name of the Factory etc.)

No

Date

Reference

Sir

Son of

Ticket No

Department

Dear Sir,

It has to be pointed out with regret that the first warning letter No, dated served on you and although you apologized for your omissions and commissions and promised to be more careful in the discharge of your duties in future, you have once again been found to be lacking in diligence and efficiency and thereby you have failed to keep your assurance to work properly. Consequently, the Management has sustained a financial loss.

Your omissions and commissions constitute serious breach of discipline and dereliction of duty for which you are liable for serious action. Taking a deliberately lenient view the Management severely reprimands you and hereby warns you that if you give any further cause for complaint against efficient discharge of your duties and good conduct, the Management will be compelled to take more serious action against you.

Warning Letter for Irregular Attendance
(Name of the Factory/Company)

No

Date

Shri

Ticket No

Department

Dear Sir,

It has been noticed from your attendance record that you have been irregular in your attendance. During the last three months you have absented yourself from duty on the following occasion (Here in mention dates) in the interest of production and in the best interests of the organisation irregularity in attendance cannot be countenanced. Therefore you are hereby warned to improve appreciably and be regular in your attendance otherwise the Management will feel reluctantly compelled to take serious action against you.

Warning Letter for neglecting work

Date

Reference No

Shri

Son of

Ticket No

Department

Dear Sir,

It has been observed that despite clear instructions and guidance of your superior officers you are not inclined to discharge your duties properly or efficiently. As a result of your carelessness, negligence and indifference to your duties the production has been adversely affected and the company has sustained financial loss of Rs _____ in terms of _____.

You are hereby warned that in future you shall have to be careful in attending to your duties diligently and efficiently failing which serious note will have to be taken to be followed by adequate disciplinary action against you.

Warning Letter against Insubordination—I

(Name of the factory/company etc)

Reference

Date

Shri son of

Ticket No,

Department,

Dear Sir,

According to a complaint received about your insubordination inso far as you refused to carry out the directions of your Supervising Inspector on , at hour and on top of it you indulged in redeness and misbehaviour, you made yourself liable for drastic action

In view of your explanation submitted on it appears that you have appreciated your mistake and regretted insubordination and misbehaviour on your part. As such a lenient view is being taken by the Management in order to afford you an opportunity to correct and improve yourself so that you shall not on any future date give any opportunity for any complaint against you

Warning for insubordination II

The foreman of your department has reported that you have misbehaved with him by disobeying and violating his lawful orders. The above act on your part is of serious nature and constitutes a misconduct. However, you are hereby given an opportunity to improve your conduct and if you will misbehave in future you will make yourself liable for disciplinary action.

Letter of Warning after Enquiry

To

Further to the letter of charge dated issued to you and receipt of your explanation dated a written enquiry was held into the charges levelled against you

We find from the proceedings of the enquiry that full opportunities were given to you for conducting your defence at the enquiry by examining your witnesses and cross examining the Company's witnesses and that you fully participated in the enquiry

We have carefully gone through the record of the enquiry, the connected papers and documents and findings of Enquiry Officer and concur with his findings that on the evidence recorded at the enquiry, the charges levelled against you have been fully proved

The charges levelled against you and proved against you at the enquiry being grave and serious the punishment warranted is that of dismissal

Under the circumstances we would have been justified in dismissing you from service. However, in consideration of the fact that you have apologised as a generous gesture, it has been decided not to inflict upon you any severe punishment but to let you off with a warning

We hope you will appreciate the generosity shown to you by better conduct on your part in future

We must, however, warn you that should you be found guilty of such or any other misconduct in future we will not hesitate from inflicting upon you the extreme punishment of dismissal if so warranted by the facts and circumstances of the case

Dated _____ (Employer/Authorised Person)

Warning Letter for Habitual Absentees

(Name of the factory/company establishment)

No _____ Dated _____

Shri _____ son of _____

Ticket No _____

Department _____

Dear Sir,

I am constrained to observe that you have been found in the habit of absenting yourself from duty (frequently) in total disregard of advice given to you from time to time by your superior officers against such practice despite warning communicated to you in this regard by our letter No _____, dated _____ have failed to improve in your irregular or erratic attendance

As a sympathetic consideration you are being given one more chance to improve yourself and you are hereby seriously warned that unless you prove regular and report for duty punctually we shall find ourselves compelled to take serious disciplinary action against you

Warning for Coming Late

It has been observed that on _____ you came late in the office/factory by _____ hours/minutes. The Management has every right to refuse to take you on duty and mark absent but you are hereby warned that if in future you will be late, you will be liable for disciplinary action.

Warning for Leaving Before Time

It is reported that you left the office/factory _____ hours/minutes earlier than the closing time, without permission or intimation to this effect. The management cannot tolerate such a behaviour because it is prejudicial to the interest of the management. You are hereby warned that if in future you will leave the office/factory in such manner you will be liable for disciplinary action.

Warning for Over Staying Leave

It is reported that you have over stayed by _____ days of the leave without any application, intimation or getting the leave sanctioned. This is not the only instance but previously also you have overstayed on _____ for which you have been warned. The above action on your part is grave and serious and makes you liable for disciplinary action. However, considering your old association with the Management you are hereby warned that if you will repeat in the aforesaid manner, the Management will be constrained to dispense with your service,

Warning for Slowing Down the Work

It is observed that you are intentionally neglecting your duties by slowing down the work. The minimum production on your part should have been _____ but you prepared only the Management has to suffer losses due to your above act.

In view of the above circumstances, you are hereby warned that if you will not give the normal production you will be liable for disciplinary action.

Warning for Absence from Duties

It has been reported that you have wilfully absented yourself on _____ without any application for leave or prior sanction. The above act on your part constitutes serious omission. Previously also you have absented yourself in the aforesaid manner. The management could have taken disciplinary action but a lenient view is taken this time by way of this final warning to the effect that in case you will absent yourself in future, the Management will be constrained to dispense with your service by way of dismissal.

ACCIDENTS

Liability of the Employer on Accident

It is the duty of an employer, acting personally or through his servants or agents, to take reasonable care for the safety of his workmen and other employees in the course of their employment. This duty extends in particular to the safety of the place of work, the plant and machinery and the method and conduct of the work, but it is not restricted to these matters.

At one time the courts were inclined to take the view that a workman accepts the risk of the inherent dangers of the employment, and must rely upon his own skill and nerve for his safety. Cf. *Thomas v. Quartermaine* (1887), 18 Q B D 685 *Smith v. Baker & Sons*, (1891) A C 325, per Lord Bramwell (dissenting). This is no longer the law.

Obligations of an employer in case of an accident

In case of any accident in factory certain obligations are placed on the management under the Factories Act, 1948 as well as under the Workmen's Compensation Act, 1923. If the factory is covered by the Employees State Insurance Act, 1948, then also certain duties and obligations are placed on the management. The obligations under the Factories Act mainly relate to the submissions of notices of accidents to the prescribed authorities and maintenance of prescribed registers of accident. Generally the Workmen's Compensation Act, 1923 governs matters relating to the payment of Compensation to the workmen involved in the accident.

The Factories Act, 1923

Section 88 of the Act provides an obligation on the management of the Factory to notify the accident to the authorities. In case of fatal or serious accident notice of the occurrences should be sent forthwith by telephone telegram or special messenger to,—

- 1 The Inspector of Factories notified for this purpose
- 2 The District Magistrate or to the Sub Divisional Officer. Reports by special messenger should be informed and those by telephone or telegram should be confirmed within 48 hours by a written report in the form No. 18.

In case of occurrence of death at the place of employment of an insured person by employment injury, the employer is required

to report this immediately to the nearest dispensary, hospital, clinic or other institution where medical benefit under the Act is available. If death occurs at any other place, the dependant intending to claim dependants benefit shall, or any other person present at the time of death may, make the report to the nearest Local Office and the dispensary, hospital, clinic, etc.

It is important to note that where an insured person dies as a result of an employment injury the body of the insured person should not be disposed of until this has been examined by an Insurance Medical Officer who may, if necessary, arrange for a post-mortem examination. If an Insurance Medical Officer is unable to arrive for the examination within 12 hours of the time of the report to him, the body may be disposed of after obtaining a certificate from such medical officer as may be available.

If the worker is injured while working on a boiler then a report is to be given to the Inspector within 24 hours vide section 18 of the Indian Boilers Act 1923.

In case the factory is covered by the Employees Insurance Act, 1948 the employer is required to keep an Accident Book in Form 15 readily accessible wherein the appropriate particulars mentioned above of any accident causing personal injury to an insured person may be entered. This book should be preserved for a period of five years from the date of the last entry thereon.

If notice is given otherwise than by making entries in the Accident Book, corresponding entries are to be made in the Accident Book.

An employer is required to send a report in Form 16 to the nearest Local Office and Insurance Medical Officer ;

(i) immediately, if the injury is serious, i.e. it is likely to disable the person for 41 hours or more, and

(ii) in any other case within 24 hours after the receipt of the notice or of the time when the accident came to the notice of the employer or of a foreman, etc.

In case of a serious injury or an injury resulting in death at the place of employment, the report to the Local Office and the nearest Insurance Medical Officer should be sent by the employer through a special messenger or otherwise as quickly as practicable. Although the report is to be sent in Form 16, it will be permissible for the employer to send the report to the Local Office and the Insurance Medical Officer in the same form as is prescribed under the Factories Act, 1948 together with additional information required under the Regulation in Form 16.

BONUS

Payment of Bonus

Originally bonus was regarded as a gratuitous payment by an employer to his employees. But now under the industrial laws payment of bonus has acquired a permanent place and means an annual payment which the employee may claim as a matter of right. Hitherto bonus was being paid on the basis of full Bench Formula evolved by the Labour Appellate Tribunal in 1950 which acquired the basis of decisions of the Supreme Court in numerous cases with the enactment of payment of Bonus Act 1965 there has been drastic change in the payment of bonus.

Payment of Bonus Act to whom applies

- (i) Every Factory.
- (ii) Every other establishment in which twenty or more persons are employed on any day during an accounting year, in respect of the accounting year, commencing on any day in the year 1964, and in respect of every subsequent accounting year.
- (iii) An establishment to which the Payment of Bonus Act becomes applicable shall not cease to apply if subsequently the number of persons employed fall below twenty.

Quantum of Bonus

A minimum bonus of 4 percent of the wages or Rs. 40 - whichever is higher, has been made obligatory on the employer irrespective of the fact whether the industry or the establishment is earning profits or sustaining a loss. A maximum of 20 percent of the wages has also been fixed with elaborate provisions of "set on" and "set off" of the profits during the boom and depression years.

Agreements and Payment of Bonus

The Payment of Bonus Act introduces the system of fixation of ceiling and floor bonus for the workers and does not permit any law agreement, settlement or contract inconsistent with the present Act prevail over the provisions of this Act and affect the statutory bonus within the minimum and maximum limit specified therein. But section 34 (2) of the Payment of Bonus Act provides a saving of the existing bonus scheme, which does not preclude employees employed in any establishment from entering into agreement with their employer for granting them an amount of bonus which is different from the Payment of Bonus Act (Agreement for payment of bonus has already been given)

Computation of Available Surplus

The computation of available surplus can better be understood by simplified illustrations in the Fourth Schedule of the payment of Bonus Act which is reproduced as follows

THE FOURTH SCHEDULE

(See section 15)

In this Schedule, the total amount of bonus equal to four per cent of the annual salary or wage payable to all the employees is assumed to be Rs 50,000. Accordingly, the maximum bonus to which all the employees are entitled to be paid (twenty per cent of the annual salary or wage of all the employees) would be Rs, 2,50,000.

Year	Amount equal to sixty per cent or sixty seven per cent as the case may be, of available surplus allocable as bonus	Amount payable as bonus	Set on or set off of the year carried forward	Total set on or set off carried forward
(1)	(2)	(3)	(4)	(5)
	Rs	Rs	Rs	Rs of (year)
1	70 000	70 000	Nil	Nil
2	6 35 000	2 60 000*	Set on 0 00 00*	Set on 2 60 000 (2)
3	2,20 000	2 50 000+ (inclusive of 30 000 from year 2)	Nil	Set on 2 20 000 (2)
4	3,75 000	2 70 000*	Set on 1 25 000	Set on 2 20 000 (2) 1 25 000 (4)
5	1,40,000	2 40 000* (inclusive of 1 10 000 from year 2)	Nil	Set on 1,10 000 (2) 1,25 000 (4)
6	3,10,000	2,50,000*	Set on 60,000	Set on Nil† (2) 1,25 000 (4) 60,000 (6)
7	1,00 000	2,70,000* (inclusive of 1 25 000 from year 4 and 25,000 from year 6)	Nil	Set on 35,000 (6)
8	Nil (due to loss)	50,000** (inclusive of 35 000 from year 6)	Set off 15 000	Set off 15,000 (5)
9	10 000	60,000**	Set off 40,000	Set off 15 000 (5) 40,000 (9)
10	2 15,000	1 60,000 (after setting off 15 000 from year 8 and 40,000 from year 9)	Nil	Nil

Notes

*Maximum

†The balance of Rs 1,10,000 set on from year 2 lapses

**Minimum

CONTRACT

The Contract Labour (Regulation to Abolition) Act, 1970

The Act, as it now stands covers all contractors and establishments employing contract labour of more than twenty persons even for a day during the preceding year. Thus all kinds of temporary labour employed for a short period is affected by the Act. With the enforcement of the Act the interests of the contract labour with regard to their terms of employment, payment by the contractor the liability for that has been shifted to the principal employer. This is an important provision to obviate the possibility of malpractices by unscrupulous middlemen.

Under the provisions of the Act every contractor and establishment employing contract labour shall have to obtain licenses and get themselves registered. Where any material fact is concealed by the employer by misrepresentation the licence is liable to be revoked or suspended.

The Central and State Advisory Contract Labour Boards have been set up under the Act which will have equal number of representatives of the workmen which shall not be less than nine in case of State Advisory Boards. In addition, Inspectors will ensure that the provisions of the Act are meticulously adhered to by all concerned. Any infringement would involve penal liability for offenders. Provision and maintenance of canteens, places of shelter and supply of drinking water and other facilities have been made obligatory on the employers.

The infringement of the provisions of the Act is non-cognizable by any Court unless a written complaint is filed by an Inspector.

The Central Government by enacting this piece of legislation has fulfilled a long cherished desire of the workmen, who were neglected by the society for a pretty long time. It will surely go a long way towards the betterment of the lot of the contract labour. It cannot be ignored that employment of contract labour is a basic necessity in certain special circumstances and this category of workers cannot be totally abolished. This contention gets impetus

from the fact that some type of work may require certain special type of talent which may be needed for a short while only. In certain cases the work done on contract basis may be beneficial both to the worker as well as the consumer. Thus there are circumstances where contract labour has a positive role to play. In other words it is a necessity rather than an evil. In case the contract labour is totally abolished, the principal employer may have to engage permanent workers for all types of work and thereby incur higher costs which will ultimately be a burden on the consumer.

Division of labour is also possible by employment of contract labour for works of short duration, construction work, loading and unloading, transportation etc., can be more conveniently undertaken and at cheaper rates too by resorting to employment of contract labour.

In a nutshell the Act will not only raise the morale of our workmen but will also add to the efficiency, economy and betterment of the industry as a whole.

Application for Registration of Establishments Employing Contract Labour

1. Name and Location of the Establishment
2. Postal address of the Establishment
3. Full name and address of the Principal Employer (furnish father's name in the case of individuals)
4. Full name and address of the Manager of person responsible for the supervision and control of the establishment.
5. Nature of work carried on in the establishment.
6. Particulars of contractors and contract labour :
 - (a) Names and Addresses of Contractors
 - (b) Nature of work in which contract labour is employed or is to be employed.
 - (c) Maximum number of Contract Labour to be employed on any day through each contractor.
 - (d) Estimated date of termination of employment of contract labour under each contractor.
7. Particular of treasury Receipt enclosed.....
(Name of the Treasury, Amount & Date)

I hereby declare that the particulars given above are true to the best of my knowledge and belief.

Manner of making application for registration of establishments

(1) The application referred to in sub section (1) of section 7 shall be made in triplicate, in Form 1 to the registering officer of the area in which the establishment sought to be registered is located

(2) The application referred to in sub rule (1) shall be accompanied by a treasury receipt showing payment of the fees for the registration of the establishment

(3) Every application referred to in sub-rule (1), shall be either personally delivered to the registering officer or sent to him by registered post

(4) On receipt of the application referred to in sub-rule (1), the registering officer shall after noting thereon the date of receipt by him of the application, grant an acknowledgement to the applicant.

(See rule 21 (1))

Application for Licence

1 Name and addresses of the contractor (including his father's name in case of individuals)

2 Date of birth and Age (in case of individuals)

3 Particulars of establishment where contract Labour is to be employed —

(a) Name and address of the Establishment

(b) Type of business trade, industry, manufacture or occupation, which is carried on in the establishment

(c) Number and date of Certificate of Registration of the Establishment under the Act

(d) Name and address of the Principal Employer

4 Particulars of contract labour —

(a) Nature of work in which contract labour is employed or is to be employed in the establishment

(b) Duration of the proposed contract work (give particular of proposed date of commencing and ending) ,

(c) Name and address of the Agent or Manager of Contractor at the worksite ,

(d) Maximum No of contract labour proposed to be employed in the establishment on any date :

5 Whether the contractor was convicted of any offence within the preceding five years If so, give details

6. Whether there was any order against the contractor revoking or suspending licence or forfeiting security deposits in respect of an earlier contract If so the date of such order

7 Whether the contractor has worked in any other establishment within the past five years If so, give details of the Principal Employer, Establishments and nature of work

8 Whether a certificate by the Principal Employer in Form V is enclosed

9. Amount of licence fee paid—No. of Treasury Challan and date

10 Amount of security deposit—Treasury Receipt No. and date.
Declaration—I hereby declare that the details given above are correct to the best of my knowledge and belief.

Place :

Date :

Signature of applicant
(Contractor)

*Note .—*The application should be accompanied by a Treasury Receipt for the appropriate amount and a certificate in Form V from the Principal Employer.

(To be filled in the office of the Licensing Officer)

Date of receipt of the application with challan for fees/Security Deposit.

(Signature of the Licensing
Officer).

21. Application for a licence :

(1) Every application by a contractor for the grant of a licence shall be made in triplicate, in Form IV, to the licensing officer of the area in which the establishment in relation to which he is the contractor, is located.

(2) Every application for the grant of a licence shall be accompanied by a certificate by the principal employer in Form V to the effect that the applicant has been employed by him as a

contractor in relation to his establishment and that he undertakes to be bound by all the provisions of the Act and the rules made thereunder in so far as the provisions are applicable to him as principal employer in respect of the employment of contract labour by the applicant

(3) Every such, application shall be either personally delivered to the licensing officer or sent to him by registered post

(4) On receipt of the application referred to in sub-rule (1), the licensing officer shall after noting thereon the date of receipt of the application, grant an acknowledgement to the applicant

(5) Every application referred to in sub-rule (1) shall also be accompanied by a treasury receipt showing

- (i) The deposit of the security at the rates specified in rule 24, and
- (ii) the payment of the fees at the rates specified in rule 26

GRATUITY

The provision for gratuity Scheme is not based on any statutory enactment but has been evolved by industrial adjudications in order to achieve social justice. In doing so, industrial adjudication has proceeded on the basis that only a small percentage of the workmen retire in any particular year and so that provision for paying gratuity to retiring workmen would ordinarily be not an unreasonable burden for the employer to be asked to bear.

No doubt a scheme for gratuity imposes a burden on the finance of the concern but the pressure is *ex facie* distributed over the years of it is limited to the number of retirements each year. An employer is not required to provide the whole amount at once and may create a fund, if he likes, and pay from the interest which accrues on a capitalized sum determined actuarially. That is one way of providing the money. Ordinarily the payment is made each year to those who retire.

To judge whether the financial position would bear the strain, the average number of retirements per year must be found out. That is one part of the inquiry. The next part of the inquiry is to see whether the employer can be expected to bear the burden from year to year. The present condition of his finances, the past history and the future prospects all enter into the appraisal of his ability.

The gratuity schemes are always made in the expectation of the industry continuing to function for a long time to come.

The position would materially alter, however, when the industry is expected to close in the immediate future or has actually closed. In such a case the entire body of workmen will be "retiring" at one and the same time so that in substance, though not in name, the provision of gratuity would be equivalent to the grant of retrenchment compensation, in addition to what is provided for in the statute. There is no justification for this in the principles of social justice.

One of the important factors which requires consideration in deciding on the propriety of a scheme of gratuity is the ability of the industry to bear the additional financial burden and in deciding this question it has been repeatedly pointed out,

burden from year to year has to be considered after taking into account the average number of retirements likely to take place an establishment

Basis of Fixing the terms of Gratuity Scheme

It has been laid down by the Supreme Court in *Burhanpur Tapti Mills, Ltd V B T. M M S*, 1965 ILL J 453 (S C) that there are two general methods of fixing the terms of gratuity i.e. on the basis of industry cum region or on the basis of units. Both systems are admissible but regard must be had to the surrounding circumstances to select the right basis. Emphasis must always be laid upon the financial position of the employer and his profitmaking capacity whichever method is selected.

FAMILY PENSION SCHEME

Employees' Family Pension Scheme 1971

A Bill seeking to amend Employees' Provident Funds Act, 1952 was introduced in the Lok Sabha on December 7 1970 which however lapsed on account of the dissolution of the then Lok Sabha. The President of India then promulgated the Labour Provident Fund Laws (Amendment) Ordinance, 1971 on February 13, 1971 with an object to amend the Act on the lines of the lapsed Bill and to frame a Family Pension Scheme for Industrial workers. The Bill replacing the said Ordinance, has been passed by both Lok Sabha and Rajya Sabha and after the assent of the President, it will become Labour Provident Fund Laws (Amendment) Act 1971.

When Applicable

- 1 The Scheme will come into force from 1st March, 1971

To whom Applicable

- 2 Subject to S 17(2) of the Employees' Provident Funds and Family Pension Fund Act, 1956, the scheme will apply to the employees of all factories, and other establishments to which the said Act applies or is applied, except those which provide for their employees a family pension not less favourable than that provided under the scheme

Membership of the Family Pension Fund

- 3.1 Subject to above, the scheme will apply to every employee (a) who becomes member of the Employee's Provident Funds or Provident Funds of factories and other establishment (exempted under S 17 of the Employee's Provident Funds and Family Pension Fund Act) on or after 1st March, 1971, (b) who has been member of the aforesaid funds immediately before 1st March, 1971 and opts to exercise his option within three months from the said date
- 3.2. A member will continue to be a member of the Family Pension Fund till he attains the age of 60 years or till

he retires or quits the service and withdraws or becomes entitled to draw the benefits or dies during the period of reckonable service (i.e. service rendered by a member in respect of which contributions are payable), which ever is earliest

Special Grant by Central Government

- 4 The Central Government will meet the entire cost of the administration of the scheme and will pay into the fund to meet the expenses such as pay, pensions, contributions to provident fund etc and proportionate expenses of capital nature

Contribution to Family Pension Fund

- 5 1 Out of the contributions paid by the employer and the employee each month a part of the contribution representing $1\frac{1}{6}$ per cent of the employees' pay alongwith an equivalent amount of $1\frac{1}{6}$ per cent, out of the employers' contribution will be credited to the Fund
- 5 2 In addition the Central Government will also contribute at the rate of $1\frac{1}{6}$ per cent of the pay of the members
- 5 3 The aforesaid contribution will be calculated on the basis of the basic wages, dearness allowance (including the cash value of any food concession) and retaining allowance, if any, to the nearest quarter of a rupee, 2.5 paise or more to be counted as the next higher quarter of a rupee

Contribution to Fund

- 6 1 The employer will, in the first instance, pay both the contribution payable to the Fund by himself and also on behalf of the member employed by him directly or by or through a contractor
- 6 2 In respect of employees employed by or through a contractor, the contractor will recover the contribution payable by such employees and pay to the principal employer together with an equal amount of contribution by the employer
- 6 3 The amount of contribution paid by the employer or a contractor on behalf of a member will be recoverable by means of deduction from the wages of the member and not otherwise

Obligation of Employers

- 7 1 To get the option referred to in para 3 1 exercised by every eligible member
- 7 2 To prepare a Fund contribution card for every employee who has become a member of the Fund.
- 7 3 To send to to the Commissioner, within fifteen days of the commencement of this scheme, a consolidated return of employees entitled to become members of the Fund Where there is no such employee, to send a 'Nil' return
- 7 4 To send to the Commissioner, within fifteen days of the close of each month, a return of the employees leaving service during the preceding month If there is no such employee, to send a 'Nil' return
- 7 5 To maintain an inspection note book for an inspector to record his observation on his visit to the establishment
- 7 6 To maintain such accounts in relation to contributions to the Fund as the Central Board may direct
- 7 7 To furnish to the Regional Commissioner, particulars of all the branches and departments, owners, occupiers, directors manager, etc , and also to send intimation of change in such particulars within fifteen days of such change
- 7 8 To obtain from the person before taking him into employment information in writing as to whether or not he is member of the fund and if yes, his account number and name and particulars of the last employer If he is unable to furnish the account number, to require such person to furnish particulars for onward submission to the Commissioner

Rate of Family Pension

- 8 1 In the case of a member who at the age of 25 years or less dies during the period of reckonable service before attaining the age of 60 years, family pension will be paid in accordance with the Table mentioned below provided he has been a member for not less then 2 years

will be payable to his family provided deceased member entered the scheme at the age of 25 or below

Retirement Benefits

- 11 On attaining the age of 60 years, a member who has contributed to the fund for not less than 2 years will be paid a lump sum of Rs 4,000 and thereafter he will cease to be a member. If he dies before he gets the amount, it will be paid to a member of his family so entitled under the scheme

Withdrawal Benefit

- 12.1 In the case of cessation of membership before attaining the age of 60 for reasons other than death, the member will be entitled to the following benefit provided that he has paid contribution for not less than 2 years

$$\frac{Y-X}{60-X} \times 1000 \times F \text{—where}$$

X=age of entry

Y=age at cessation of membership

F=a factor depending on the great cessation of membership as given in the Table I of the Scheme

- 12.2 In the event of cessation before the completion of two years' contribution, the contributions credited to the Fund together with interest thereon at the rate of 5½ per cent will be refunded to him

For Members entering Fund after 25 years

- 13 The pension and other benefits in such cases will be payable in accordance with the paras 8, 10, 11 and 12 multiplied by a factor depending on the age entry given in Table II of the Scheme

LAY OFF

There were times when an employer could terminate the services of an employee at any time even though his business or industry may only be temporarily stopped and there was every prospect of resumption of the business or industry. The law did not impose any obligation upon the employer to give any compensation to an employee if his services were retrenched. The Legislature has, therefore, stepped in to safeguard the employees against the afore said common law right of the employer by curtailing and limiting it so as to be bound to lay off his employee under certain circumstances instead of being free to dispense with his services if there is any temporary breakdown under specified circumstances. This the legislature has done by inserting clause (kkk) in S 2 and Chapter VA (clauses 25A to 25E and 25J) in the Industrial Disputes Act, 1947, by the Industrial Disputes (Amendment) Act, 1953 (43 of 1953), with effect from 24th October 1953. Which has imposed certain obligations upon the employer and conferred a certain right upon the employee. This has been provided for by statutory law so that it cannot be argued that unless the employer has the right to lay off an employee under the contract between him and his employee, he cannot claim that right by reason of the provisions of the Act.

Clause (kkk) of Section 2 of the Industrial Disputes Act defining "lay off" is as follows —

(kkk) Lay off (with its grammatical variations and cognate expression) means the failure refusal or inability of an employer on account of shortage of coal power or raw materials or the accumulation of stocks or the breakdown of machinery or for any other reason to give employment to a workman whose name is borne on the muster rolls of the industrial establishment and who has not been retrenched

Explanation Every workman whose name is borne in the muster roll of the industrial establishment and who presents himself for work at the establishment at the time appointed for the purpose during normal working hours on any day and is not given employment by the employer within two hours of his so presenting himself shall be deemed to have been laid off for that day within the meaning of this clause

Provided that if the workman, instead of being given employ

ment at the commencement of any shift for any day is asked to present himself for the purpose during the second half of the shift for the day and is given employment then, he shall be deemed to have been laid-off only for one-half of that day.

Provided further that if he is not given any such employment even after so presenting himself, he shall not be deemed to have been laid-off for the second half of the shift for the day and shall be entitled to full basic wages and dearness allowance for that part of the day.

Procedure for Lay-Off

Rule 75-A of the Industrial Disputes (Central) Rules, 1957 prescribes . (1) if any workman employed in an industrial establishment as defined in the Explanation below Section 25-A (not being an industrial establishment referred to in sub-section (1) of that section) is laid-off, then, the employer concerned shall give notices of commencement and termination of such lay-off in Forms O-1 and O-2 respectively within seven days of such commencement or termination, as the case may be

(2) Such notices shall be given by an employer in every case irrespective of whether, in his opinion, the workman laid-off is or is not entitled to compensation under section 25-C.

The notice is to be given to the Regional Labour Commissioner with a copy to Conciliation Officer.

However, the Factory Rules framed by several state Governments require a notice to the Inspector of Factories of every case of lay-off.

Compensation For Lay-Off

Section 25C of the Industrial Disputes Act, 1947, relating to the right of workmen laid-off for compensation, as substituted by the Industrial Disputes (Amendment) Act, 1945, (No. 35 of 1965) reads as follows :

“25-C. Whenever a workman (other than a badli workman or a casual workman) whose name is borne on the muster rolls of an industrial establishment and who has completed not less than one year of continuous service under one employer is laid off, whether continuously or intermittently, he shall be paid by the employer for all days during which he is so laid-off, except for such weekly holidays as may intervene, compensation which shall be equal to fifty per cent. of the total of the basic wages and dearness allowance that would have been payable to him had he not been so laid-off ;

Provided that if during any period of twelve months, a workman is so laid-off for more than forty five days no such compensation shall be payable in respect of any period of the lay off after the first forty five days if there is an agreement between the workman and the employer

Provided further that it shall be lawful for the employer in any case falling within the foregoing proviso to retrench the workman in accordance with the provisions contained in section 25F at any time after the expiry of the first forty five days of the lay off and when he does so any compensation paid to the workman for having been laid-off during the preceding twelve months may be set off against the compensation payable for retrenchment

Explanation

Badli Workman means a workman who is employed in an industrial establishment in the place of another workman whose name is born on the muster rolls of the establishment but shall cease to be regarded as such for the purposes of this section, if he has completed one year of continuous service in the establishment

Workmen Will Not be Entitled to Lay Off Compensation

No compensation shall be paid to a workman who has been laid off —

(i) if he refuses to accept any alternative employment in the same establishment from which he has been laid off or in any other establishment belonging to the same employer situate in the same town or village or situate within a radius of five miles from the establishment to which he belongs if in the opinion of the employer such alternative employment does not call for any special skill or previous experience and can be done by the workman provided that the wages which would normally have been paid to the workman are offered for the alternative employment also ,

(ii) if he does not present himself for work at the establishment at the appointed time during normal working hours at least once a day ,

(iii) if such laying off is due to a strike or slowing down of production on the part of the workmen in another part of the establishment

ANNEXURE
Statement of Reasons
Form O-2

To,

The Regional Labour Commissioner (Central),

(here specify the region concerned)

Sir,

As required by Rule 75 A of the Industrial Disputes (Central) Rules, 1957 and in continuation of my our notice dated** in Form O 1 I/we hereby inform you that the lay-off in my/our establishment has ended on**

Your faithfully,

Copy to the Conciliation Officer (Central) _____

(here specify the address of the Conciliation Officer (Central) of the local area concerned)

FORM-O-1

To,

The Regional Labour Commissioner (Central),

— — — — —
 (here specify the region concerned),

Sir,

Under Rule 75-A of the Industrial Disputes (Central) Rules, 1957 I/we hereby inform you that I/We have laid-off——— out of a total of*———Workmen employed in the establishment with effect from**———for the reasons explained in the Annexure

2 Such of the workmen concerned as are entitled to compensation under Section 25-C of the Industrial Disputes Act, 1947, will be paid compensation due to them

Yours faithfully,

* * *

Copy forwarded to Conciliation Officer (Central)

(here specify the address of the Conciliation Officer (Central) of the local area concerned)

*Here insert the number of workmen

**Here insert the date

***Here insert the position which the person who signs the letter holds with the employer issuing the letter.

LEAVES AND HOLIDAYS

Industrial workers in India receive many social benefits including leaves and holidays. They are entitled to leave and holidays under the provisions of the Central and State Laws. Very often they make demands over the above privileges to which they are statutorily entitled. If such demands are not settled with their employers, they are raised as disputes which are adjudicated upon by Industrial Tribunals. Settlements and awards have thus enabled the workers to secure additional privileges. There are indeed many instances where employers have voluntarily given leave benefits to their workers, in addition to those conferred by statute.

The leave privileges enjoyed by labour vary from centre to centre, from industry to industry and even from one establishment to another in the same area.

The leave and holiday benefits provided by industry to the employees constitute one of the important terms of employment, next in importance only to wages.

From the point of view of scope and quantum of leave benefits the Factories Act, 1948, is by far, the most important piece of labour legislation. Its provisions apply to workers employed in factories working with power and employing more than 10 persons and without the aid of power and employing more than 20 persons.

A feature of this Act is that it provides for grant of annual leave with wages to workers in addition to a weekly off day which is unpaid. According to the Act, any employee can avail of this leave, if he has put in service for a minimum period of 240 days in the previous year. The Act stipulates that a worker should not avail of this leave more than three times in a year.

Persons who join an establishment on any day after 1st January are eligible for the leave on pro rata basis provided they have worked for two thirds of the total number of days in the remaining period of the calendar year.

Under the Act, the managements are required to pay leave wages to workers who intend to go on leave before the commencement of their leave. The benefit is, however, available to those employees whose leave period exceeds 4 days in the case of adult workers and 5 days in case of young persons.

A provision also exists in the Act for payment to a worker in respect of leave not taken, if he is entitled to such leave and if his employment is terminated by an employer before he has availed such leave or if having applied for and having been granted such leave he quits his employment. In such cases, managements must make the payments before the expiry of the second working days after such termination. Persons who are discharged or dismissed are entitled to payment in lieu of leave not taken even if they have not put in 240 days of work.

It may be added that in several establishments even more liberal terms in respect of annual (privilege) leave than are conferred by the law have been granted to workers under Tribunal Awards, taking into consideration the prevailing trend in other comparable concerns, the financial position of the company and the strenuous character of work of an operative etc.

For the leave period, the worker is to be paid at a rate equal to the daily average of his total full time earnings which he earned during the months immediately preceding his leave and the cash equivalent of the advantage accruing through the concessional sale of food grains and other articles to a worker. For the purpose of computation of daily average earnings, the wages comprising basic wage and dearness allowance earned by a worker during the month preceding his leave are required to be averaged out to arrive at a daily rate. In computing this rate, bonus and over-time allowance are to be excluded.

APPLICATION FOR LEAVE

Name of applicant .	..	...	...	...	...	...
Designation...	..	...	...	...Department...	...	...
Nature and period of leave applied for .	...	...	...	...	...	...
Date from which leave is required ..	..	..	...	...	...	...
Grounds on which leave is required...	...	...	...	...	...	...
Full postal address during the period of leave...	...	...	...	...	...	...

Signature or thumb impression of the applicant

Recommendation of the Head of the Department... ..

Leave is recommended/is not recommended Whether a substitute is necessary... .. Yes/No

Brief reasons if the leave is not recommended

Report of the Establishment Section

The applicant has availed of last leave in .. . 19... ..days

Nature of leave availed in the last year... .. Leave availed of in the current year... ..

Privilege days Casual days
 Without pay days Period of absence with
 out permission of any in the current year Leave due
 Privilege days Casual days
 Signature of Incharge Estt

Order of the Sanctioning Authority

Leave as detailed below is sanctioned w e f 19 /not
sanctioned

days leave with pay

APPLICATION FOR LEAVE

To,

The _____ Dated _____
 _____ (employer)
 _____ (name of shop/establishment)
 _____ (address)

Dear Sir,

I hereby apply for grant me _____ days'/days Privilege
 Sick/Leave, with effect from _____ to _____
 (both days inclusive)

The leave is desired on account of _____

A medical certificate in support of my application is attached
herewith (incase of leave)

During leave period my address will be —

Yours faithfully,
(Signature/L T I)

for employer's use —

- Privilege/Sick/Casual leave of _____ days is granted
from _____ to _____, both days inclusive or,
- Leave prayed for is being refused on account of _____ or
- Privilege Leave prayed for is postponed to be considered
on _____

Date

Employer's signature

Entry made in the Leave Register (page)

Dated

Signature of employer

order noted

Signature of employee

Leave Pass —

(Name and address of the shop/establishment)

No -----

Dated -----

LEAVE PASS

Sri/Smt -- -- -- --

Ref Your application dated -----for
Privilege/Sick Leave

Reference is hereby made to your application for leave
dated -----and you are granted privilege/sick leave of -----
-----days from -----to -----both days inclusive

2 In case you desire an extension of leave you must apply
in sufficient time for your reply to reach you, so that in case of our
refusal to extend leave you may be able to report for duty on the
expiry of leave

3 In case of sickness your application for extension of leave
is required to be supported by a certificate from a registered medical
practitioner

4 Regarding your address during leave in the leave application
is -----in case there be any change of
address, you are required to terminate the same

5 In case you unauthorisedly overstay your leave, you will be
liable to be proceeded against for such unauthorised absence

Signature of employer

EMPLOYEES PROVIDENT FUND

The Employees Provident Funds Act is a piece of social legislation intended primarily to provide for protection to a worker against the contingency of old age, and to his dependants in the event of his death. At present the Employees Provident Fund members constitute the largest body of beneficiaries among all social security institutions in the country.

Applicability of the Act

At the time of its enforcement the Employees Provident Funds Act covered establishments employing 50 or more persons. In 1960 the Act was amended to bring within its ambit establishments employing 20 or more persons. In terms of pay ranges, the Act which covered initially members drawing Rs 300/ or more per month was amended in 1962 to enhance the limit to Rs 1000/.

Eligibility of Membership

An employee becomes a member if he has worked in a covered establishment continuously for one year or has actually worked for 240 days during the period of 12 months or less. The Act imposes an obligation both on the employer and on the employee to ensure membership of an employee who has completed the qualifying period.

Exemption for Infancy Period

Industries and establishments which have been newly set up are not brought within the coverage immediately but are afforded an period of three to five years giving them a reasonable period of time to reach financial stability before they are brought within the purview of the Act. A period of three years in the case of establishment employing 50 or more persons and five years in the case of those employing 20 or more persons, is prescribed for this purpose. On similar considerations establishments registered under the Co-Operative Societies Act 1912 or under appropriate State Legislations relating to Co-operative Societies are also kept beyond the pale of the Provident Fund law if such establishments employ less than 50 persons.

Rates of Contribution

The statutorily/prescribed rate of contribution both by the

members and the employer used to be 6½ per cent in all cases. In 1963, however, the Central Government acquired the right to enhance this rate to 8 per cent in any establishment or class of establishments after making an enquiry in this regard.

Applicability of Act by Agreement

The law provides that even in cases where the Provident Fund Act does not hold away, if the employer and a majority of the employees agree that the Act should be made applicable, the benefits could be extended to all the employees of the establishment.

Investment of provident fund accumulations are required to be regulated in accordance with the directions issued by the Central Government in this behalf. The surpluses of provident fund are invested in Central and State Government securities, in small savings as also the Deposits of Post Offices. The yield on these investments is distributed to the members as annual interest on accumulation.

Administration of Provident Fund

The Administration of the Provident fund vests in a Central Board of Trustees, a corporate body with tripartite representation. Representatives of the Central and State Governments and of organisations of employers and workers are members of this Body. The Central Provident Fund Commissioner is the chief executive of the Organisation and functions as the Secretary of the Central Board of Trustees. He is assisted by Regional Commissioners in the state. For the purposes of administration the Fund an administrative charge is paid by the employers of covered establishments at a rate of 0.37 per cent of pay of the members.

Exemption From the Act

It is possible for establishments which on their own provide for their employees benefits in the nature of provident fund, gratuity, pension etc. to seek and secure exemption from the provisions of the statutory scheme. The test for grant of exemption in such cases is that the total quantum of benefits provided in such is that the total quantum of benefits provided in such establishment is not less beneficial than that allowed under the statutory scheme. Individual members or members as a class can also ask and obtain exemption from the Scheme in case benefits which are not less favourable in comparison with the statutory scheme are available to them. The underlying idea is that while the benefits following from the Employees Provident Fund Scheme should be regarded as the minimum in the event of better provident fund or retirement benefits forthcoming the letter of the law would not come in the way.

Exempted funds, however, are required to be administered by bipartite boards of trustees specially constituted for the purpose. The functioning of such funds is, however, subject to supervision and inspection by the Employees Provident Fund authorities.

Advance From the Fund

Provident Fund benefits are essentially intended for affording financial protection against the contingencies of old age and death. However there has been a growing demand for the grant of advances from the fund for meeting specific needs and the funds has not been able to resist such demands although strictly this amounts to the diversion of funds intended for long term benefits to short term ends. Non refundable advances subject to certain conditions and for specific purposes for eventualities are permitted. These include payment of premium of Life Insurance policy, purchase of a dwelling house, medical treatment of the member or his family, marriage of a daughter, post matriculation education of children, damage of property by a calamity or loss of employment owing to closure of an establishment.

In order to ensure continuity of membership lest a worker has force to render the qualifying period once again, a period of six months is prescribed for the settlement of accounts of an outgoing member. The period, however, does not apply in the event of death, permanent disability, superannuation, mass retrenchment or migration for permanent settlement abroad of the member. In all these cases a member is entitled to receive his own share as also a graded percentage of employer's share. This percentage increases with the length of service expressed in terms of completed years of membership.

The residual portion of the employer's share is transferred to a Reserve and Forfeiture Account of the Fund. The Organisation has constituted a Special Reserve Fund out of this Account for the purpose of paying to outgoing members or their survivors the share of contribution which may have been actually deducted by the employer from the Wages but not remitted to the fund. The organisation has also constituted a Death Relief Fund from the Forfeiture Account to ensure that nominees or heirs or deceased members will receive a minimum sum of Rs. 750/-.

One of the problems with which the Employees' Provident Funds Organisation has been contending is the steadily growing amount of arrears from covered unexempted establishments. There are several factors leading to the growth of the arrears, not the least of which is the lack of powers vested in the Regional Commissioners to prosecute the defaulter directly or to issue recovery certificates for recovery of defaulted amount as arrears of land revenue contemplated by the Act. Secondly the penalties prescribed under the Act have also not proved to be sufficiently deterrent.

RETRENCHMENT

The services of a workman can be dispensed with by way of retrenchment caused by adverse business conditions. Workers may also become surplus on account of rationalisation or modernisation of plant or machinery. To ensure that workers' interests are safeguarded in cases of contemplated retrenchment the Industrial Disputes Act was amended in 1953 and again in 1956.

Retrenchment means the termination of the services of an employee otherwise than a punishment inflicted by way of disciplinary action. The voluntary retirement of an employee or retirement of a workman, reaching at the age of superannuation under the terms of the employment or owing to continued ill health would not be retrenchment.

The word 'retrenchment' as used in Section 25 F and in section 2 of the Industrial Disputes Act does not include termination of services of all workmen in an establishment on a 'bonafide' closure of the establishment or on a transfer of ownership thereof. One of the essential ingredients of retrenchment is a continuing or running industry or establishment. As such the ordinary notion of retrenchment in an industry or establishment is that the business itself is being continued but a portion of the staff or the labour force is discharged as surplusage. Therefore termination of the services of all the workmen as a result of the bonafide closure of the business or transfer of ownership thereof cannot be properly described as retrenchment.

An employer is justified in terminating the services of an employee in order to reorganise his business. It has been held in the case of *Firestone Tyre and Rubber Co. of India v Workmen*, 1950 I C R P 401 that retrenchment being a matter entirely of internal management, the employer can decide whether it is necessary or not. He cannot, however, act in an arbitrary manner. He should act bonafide and not victimizing his employees. However, an employer may take into account consideration of efficiency, any trustworthy character of the employees and if he is satisfied that a person with a long service is inefficient, unreliable or habitually irregular in the discharge of his duties, it would be open to him to retrench his service while retrenchment is justified when the employer has no work and it will be unreasonable for him to maintain employees under such circumstances.

The right to retrench the number of his employees proportionately to the reduction in the volume of work should always be thereto an employer and the proper corrective or remedy appears to be for the State to open an employment exchange or pool from where those remaining without employment at the commencement of the day can be sent out for employment elsewhere or to reintroduce a scheme of insurance against unemployment out of the funds contributed by workers and employers and the state in a certain proportion

It has also been held by the tribunals and the courts that management is the best judge to decide the number of workmen who had become surplus

Conditions of Retrenchment

Section 25F of the Industrial Disputes Act 1947 provides that no workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until —

- (a) The workman has been given one months notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been given one month's notice pay.
- (b) The workman has been paid at the time of retrenchment compensation which shall be equivalent to fifteen days average pay for every completed year of service or any part thereof in excess of six months
- (c) Notice in the prescribed manner is served on the appropriate Govt.

Whether the retrenchment is bonafide or not and if the dispute arises, the onus lies on the employer or the management to prove it so.

In *Haji Ismail said and Son Pvt Ltd v Fourth Industrial Tribunal* (1966 11 LLJ 59) the point for decision before the Division Bench of the Calcutta High Court was 'Whether termination of service in accordance with the Standing Orders is always and necessarily a retrenchment within the meaning of section 2(oo) of the Act and if it is not so always in which cases such termination is retrenchment'. The High Court held as follows .

"The Supreme Court decisions have laid down that even in termination of service under the Standing Orders can in certain circumstances such as colourable exercise of power, unfair labour practice or, victimisation or malafides could be retrenchment within the meaning of section 2 (oo) of the Act. But outside such cases termination

under the Standing Orders is not retrenchment within the said definition "

In this case the Standing Orders inter alia provided that the services of a permanent workman could be terminated on a month's notice or payment of one month's wages in lieu of such notice. The employer was running a distillery business. The Government refused to grant licence to the employer to manufacture the spirit and to supply the required raw materials. An attempt was made by the employer to run the distillery also proved a failure. Consequently the employer terminated services on a large number of their workmen under the relevant Standing Orders offering to pay one month's wages in lieu of notice. The industrial dispute in regard to the retrenchment was referred for adjudication to the Tribunal. No allegations were made against the employees that their action was mala fide or colourable. It was held that it was not retrenchment within the meaning of section 2(oo) of the Act and therefore S 25F of the Act did not apply. Otherwise if it comes within the 'hiring and firing' doctrine the retrenchment would be illegal and a colourable exercise of the powers to terminate service. In the present case it was justified on the grounds (a) that there was no licence (b) that there was no raw materials supplied and (c) that there was no work for the workman.

The closure of a business as a result of a winding up order under the provisions of the Companies Act, 1956 cannot be retrenchment. The workmen will not therefore, be entitled to retrenchment compensation under section 25F of the Act though they may be entitled to the compensation laid down in Section 25FFF of the Act which may be treated as a preferential claim under section 330 of the Companies Act 1956 (28 F J R 300).

Where a workman is found guilty of misconduct but the employer taking a lenient view terminates his service by notice under the Standing Orders instead of dismissing him the termination of services will not fall within the ambit of the definition of retrenchment in section 2(oo) of the Act and the provisions of S 25F of the Act will not therefore apply (*Amritsar Rayan and Silk Mills Pvt Ltd v Industrial Tribunal Punjab* 1962 1 LLJ 5631).

When an employee claims retrenchment compensation he must prove that he was retrenched from service. Normally it is for the person putting forward the claim to establish the facts and circumstances supporting the claim. It is not for the employer to prove that the discharge or termination of service of the employee was otherwise than by way of retrenchment (A I R 1964 Mad 256).

Winding up of a partnership business is closure of the business for unavoidable reasons and a receiver appointed by court of such

11 In *Bennet Coleman and Co Employees Union v Bennet Coleman and Co* (1964 1 LLJ 458) it was held that the retrenched workmen cannot plead violation by the employer of the principle of 'last come first go' when their union has agreed to the seniority list prepared by the employer and the retrenchment effected is in accordance with the seniority as in the proposed list

Notices retrenchment

No 1

Due to unavoidable circumstances followed by continued losses it has been decided to close down the establishment with effect from _____ and the period hence forth be treated as one month's notice

You will be paid your dues including retrenchment compensation. You are hereby directed to settle your account by handing over the charge to _____ and collect your dues including retrenchment compensation

Manager

No 2

Due to fall in business and recession in trade, we are constrained to retrench your services with effect from _____

You are hereby offered retrenchment compensation along with the all other dues. Please collect the same from the accounts department

Manager

No 3

Since there have been continued losses and inspite of our best efforts there has been no improvement. In view thereof we are constrained to close down _____ (name of the Department) w e f _____ Your services will not be required with effect from _____ and the period between _____ to _____ shall be treated as notice period

You are hereby offered retrenchment compensation as per section 25F of the Industrial Disputes Act. You may collect the same from the account department

c c Accounts Department

Manager

FORM P

*Form of notice of retrenchment to be given by an employer
under clause (c) of section 25 F of the Industrial
Disputes Act 1947*

Name of employer

Address

Dated the

day of

197

To,

The Secretary to the Government of India

Ministry of Labour New Delhi

Sir,

Under clause (c) of section 25 F of the Industrial Disputes Act 1947 (14 of 1947) I/we hereby inform you that I/we have decided to retrench* workmen with effect from** for the reasons explained in the annexe

2 † +The workmen concerned were given on the** 197 one month's notice in writing as required under clause (a) of section 25 F of that Act /Retrenchment is being effected in pursuance of an agreement, a copy of which is enclosed /The workmen were given on the** 197 one month's pay in lieu of notice as required under clause (a) of section 25 F, of the Act

3 The total number of workmen employed in the industrial establishment is*** and the total number of those who will be affected by the retrenchment is given below —

*Category of designation
of workmen to be re
trenched*

(1)

Number of Workmen

Employed

(2)

To be retrenched

(3)

4 I/we hereby declare that the workman/concerned has/ have been/will be paid compensation due to him/them under section 25-F of the Act on** the expiry of the notice period.

Yours faithfully

† †

* Here insert the number of workmen.

** Here insert the date

† Delete the portion which is not applicable

*** Here insert the total number of workmen employed in the industrial establishment

†† Here insert the position which the person who signs this letter holds with the employer issuing the letter

ANNEXE.

Statement of reasons

Copy to (1) Conciliation Officer (Central) Here enter office address of the Conciliation Officer in Local area concerned)

2. Regional Labour Commissioner (Central),

..... Zone,

EMPLOYEES STATE INSURANCE

Where the Employee's State Insurance Scheme has been brought into force the liabilities for the payment of compensation under the Workmen's Compensation Act as well as the payment of maternity benefits under the Maternity Benefits Act have been taken over by an autonomous body called the Employees State Insurance Corporation and in addition medical and sickness benefits are allowed to an employee, insured under the scheme. The medical care is being gradually extended even to his family. In respect of employment injury (accidental injury death or occupational disease in the circumstances under which compensation is payable under the Workmen's compensation Act 1923) the persons covered by the Scheme or their dependants are entitled to receive disablement or dependants' benefits provided by the Corporation under the Scheme and not by the employer under the Workmen's Compensation Act. When a person receives any of the benefits provided under the E S I Scheme he is not entitled to receive any similar benefit under other enactments. So far as the employer's liabilities and obligations in the matter of disablement or dependants benefit under the Workman's Compensation Act 1923 are concerned they continue to apply to him, save as modified under the E. S. I. Scheme.

The legal basis of the State Insurance Scheme is the Employees State Insurance Act, 1948 and the Employees State Insurance Regulations 1950 framed thereunder are amended from time to time. The salient features of the scheme as well as the obligations imposed on employers by the Employees State Insurance Act and the Regulations are briefly given herein below

Scope and coverage

The Act covers factories employing 20 persons or more carrying on manufacturing process with the aid of power. The Act excludes from its coverage mines railway running sheds and installations belonging to defence services. It covers all employees manual clerical and supervisory and those engaged by or through contractors whose remuneration does not exceeds 500/- per month. The wage limit for coverage of employees raised from Rs 400/- to Rs 500/- and the definition of term employee was enlarged to include administrative staff and persons engaged in connection with purchase of raw materials or sale of distribution of products and related functions, by the Amendment Act in 1966. The Act empowers the Central Govt. to extent its provisions to other establishments

or classes of establishments industrial commercial agricultural or otherwise

Finance.

The Scheme is financed mainly by contributions from employees with the State Governments sharing a part of the costs of medical cares. The States bear 1/4th costs of medical care in area covering only insured persons and 1/8th costs of medical expenses where medical benefits has been extended to the families also. The contribution as also cash benefits are wage related. The insured persons for this purpose have been divided into nine wage groups with specified rates of contribution and benefits corresponding to each. The insured persons drawing less than Rs. 150 per day are exempted from payment of employee's contribution.

Benefits

The Scheme provides besides medical care, protection against sickness maternity disablement and death due to employment injury. In addition there is a provision for funeral benefit in the event of the death of the insured person.

The insured person entitled to benefits under the Employees State Insurance Scheme is not eligible to claim similar benefit under the Workman's Compensation Act or the State Maternity Benefits Act.

Sickness Benefit

Sickness benefit consists of periodic cash payments to an insured person in case of sickness duly certified by the Insurance Doctor and on fulfilment of a minimum contributory condition of 13 weeks contributions in a contribution period of 26 weeks. The benefit is payable for a maximum of 56 days in any two consecutive benefit period. The rate of benefits roughly 50% of the average wage. There is a waiting period of 2 days which is waived off if the insured person falls sick again within 15 days of the previous spell of sickness.

Extended Sickness benefit

Insured person suffering from tuberculosis leprosy mental and malignant diseases and other diseases of a prolonged nature are paid extended sickness benefits for a period of 309 days after they have exhausted the normal period of entitlement of sickness benefits. The extended sickness benefits payable to insured person who have been in continuous employment for at least two years.

Maternity benefit

Maternity benefits paid to insured workman on fulfilment of

the contributory condition as in the case of sickness benefit. The duration of maternity benefit is 12 week of which not more than 6 weeks can precede the expected date of confinement. The rate of benefits twice the standard benefit rate for sickness benefit. By a recent amendment the maternity benefit under the Act has been extended to cover cases of miscarriage for which benefit is admissible for a period of six weeks and of illness arising out of pregnancy confinement premature birth of child or miscarriage. In such cases the period of maternity benefit can be extended by as much as one month.

Disablement benefit

The disablement benefit is payable for disablement resulting from employment injury or for a specified occupation disease contracted in the course of employment. There is no contributory condition and no limit to the duration of benefit. The rate of disablement benefit is 25% above the standard rate of sickness benefit. In the event of an employment injury resulting in permanent disablement the insured person is entitled to permanent disablement benefit at a rate proportionate to the loss of earning capacity. The benefit is payable for life. In certain cases where the benefit does not exceed Rs 1/- per day commutation may be allowed.

Dependants' Benefit

Dependants' Benefit is payable to the dependants of the insured person who dies as a result of an employment injury. The rate of benefit is the same as for temporary disablement benefit. The amount however is distributed between the widow and the children in the ratio of 3 : 2.

Medical benefits

The medical benefit includes out door treatment domiciliary visits and provisions of drugs and dressing specialist's service (including pathological and radiological tests) and indoor treatment. Artificial limbs, dentures, spectacles, and hearing aids are provided free of costs if these become necessary in the event of disability caused by an employment injury.

STANDING ORDERS (Service Rules)

The relationship of employer and employee or that of a master and servant as it is commonly called is primarily voluntary relationship which the parties may enter on terms laid down by themselves within limitation imposed by the general law of contract which is governed by the Indian Contract Act 1872. A man agrees expressly or by implication to be an employee or an apprentice and there is no other way in which the relationship can arise.

In the case of a written contract for instance one contained in an appointment letter or a duly executed deed of agreement or in any other form laid down or prescribed by law, there should be no difficulty in interpreting the conditions of service and following the same. Where, however, the contract of employment is only implied all the circumstances bearing on it and relating to the same will be required to be considered in inferring the conditions by which the employment is governed.

No industrial development is possible without active co-operation between capital and labour and harmonious working of the two together in a peaceful manner is a bare necessity for industrial progress in any country. Industrial conflicts means a loss to both the employers and the employees which again means national loss. The State therefore cannot play the role of a mere spectator to the vast industrial organisation which no doubt are primarily the outcome of contractual obligations between the employers and the workers, subject to change with the change in society and the economic conditions. By legislation therefore Government has thought fit to regulate in certain matters conditions of service of workmen in industrial organisations and the contractual obligations must be deemed to have been superseded, amended, modified or altered by these legislative enactments and statutory rules framed there after. The following observations of Supreme Court in *Rai Bahadur Dewan Badri Dass v I T* (1962 11 LLJ 366) would be relevant.

“The board and general question raised by the learned Solicitor General on the basis of the employer's freedom of contract has been frequently raised in industrial adjudication, and it has consistently been held that the said right is now subject to certain principles which have been evolved by industrial adjudication in advancing the cause of social justice.”

It was held in *Bharat Bank Ltd v. Employees of Bharat Bank Ltd* (1950 LLJ 921) that

"In settling the dispute between the employer and the workmen the function of the tribunal is not confined to administration of justice in accordance with law. It can confer rights and privileges on either party which it considers reasonable and proper though they may not be within the terms of any existing agreement. It has not merely to interpret or to give effect to the contractual rights and obligations of the parties. It can create new rights and obligations between them which it considers essential for keeping industrial peace.

The doctrine of the absolute freedom of contract has then to yield to the higher claim for social justice.

Standing Orders

The first legislative enactment in India which sought to regulate the making of standing orders was contained in S 26 of the Bombay Industrial Disputes Act, 1938. This was however, found wanting in many respects. Before the Labour Investigation Commission was set up to implement the unanimous resolution in September, 1943 of the Tripartite Labour Conference, Workers' Organisations suggested that legislative provision should be made for the preparation and approval of standing orders by Government Authority in consultation with the workers organisations and the provisions should also be made for appeals to some higher authority in the event of dispute. The question was again discussed at the 6th Labour Conference in October, 1944 and ultimately resulted in the Industrial Employment (Standing Orders) Act, 1946 which came into force on 23rd April, 1946.

In order to understand the scheme of the Act it will be relevant to quote the observations of the Supreme Court *Bagalkot Cement Co v R K Pathan AIR 1963 SC 439*

"The Act was passed in 1946 because the Legislature thought that it was expedient to require employments in individual, establishments to define with sufficient precision the conditions of employment under them and to make the said conditions known to workman employed by them. Prior to the passing of the Act conditions of employment obtaining in several industrial establishments were governed by contracts between the employers and their employees. Sometimes the said conditions were reduced to writing and in many cases they were not reduced to writing but were governed by oral agreements. Inevitably in many cases the conditions of service were not well defined and there was ambiguity or doubt in regard to their nature and scope. That is why the Legislature took the view that in regard to industrial establishments to which the Act

applied the conditions of employment subject to which industrial labour was employed should be well defined and should be precisely known to both the parties. With that object the Act has made relevant provisions for making Standing Orders which after they are certified constitute the statutory terms of employment between the industrial establishments in question and their employers.

The Act applies to every industrial establishment where in one hundred or more workmen are employed or were employed on any day of the preceding twelve months. It can be extended even to establishment whose employment of labour is less than one hundred and it does not apply to any industry to which Ch VII of the Bombay Industrial Relations Act 1946 applies or to any industry to which the provision of the Madhya Pradesh Industrial Workmen (Standing Orders) Act 1959 applies. In other words, normally Standing Orders have to be drafted by the employer and their certification obtained under the Act wherever the establishment employs more than one hundred industrial workmen. Section 1(3) the certifying authority under the Act means a Labour Commissioner or a Regional Labour Commissioner and includes any officer appointed by the Appropriate Govt by notification in the official gazette, to perform all or any of the functions of a certifying office under the Act. S 2(c) of the Act provides for an appeal against the order passed by the Certifying Officer and the appellate authority means an Industrial Court whether it exists or in its absence an authority appointed by the Appropriate Govt by notification in the official Gazette to receive in such area as may be specified in the notification the functions of any appellate authority under the Act.

Thus the matters which have to be covered by the Standing Order and in respect of which the employer has to make a draft for submission to the Certifying Officer are matters specified in the Schedule. Section 3 requires the submission of the draft of Standing Orders within 6 months on which the Act becomes applicable to an industrial establishment. Under S 4, the Standing Order become certifiable if provisions are made therein for every matter set out in the Schedule and they are found to be otherwise in conformity with the provisions of the Act. After the amendment of this section made in 1956, the Legislature has imposed upon the certifying officer and the appellate authority the duty to adjudicate upon the fairness or reasonableness of the provisions of any standing orders. Prior to the amendment, it was not open to the said authorities to examine the fairness of the Standing Orders submitted by the employer. The result of S 4, therefore, is that Standing Orders have to provide for all the topics specified in the Schedule and they have to be in conformity with the Act. Their reasonableness can be examined by the appropriate authorities and suitable modifications can be made by them in accordance with their decision. Section 5 provides for

the procedure which has to be followed by the Certifying Officer before certifying the Standing Orders. The procedure is intended to give an opportunity to both the parties to be heard before the final order is passed. Section 6 provides for an appeal and S 7, lays down that the Standing Orders shall come into operation on the expiry of 30 days from the date on which authenticated copies thereof are sent as required by S 5, sub sec (3) or where an appeal is preferred, on the expiry of seven days from the date on which the copies of the appellate order are sent under S 6(2). Section 8 requires the Certifying Officer to keep a register of standing orders and S 9, the said Standing Orders have to be prominently pasted by the employer in English and in the language understood by the majority of the workmen on special boards. Section 10 deals with the duration and modification of standing orders. It provides that except by agreement the Standing orders, after they are certified, shall not be liable to modification until the expiry of six months from the date on which they came into operation. Section 10(2) empowers both the employer or the workman to apply for a modification in the said standing orders. It would thus be clear that after they are certified, the standing Orders have to remain in force for six months unless, of course, they are modified in the meanwhile by consent. After six months are over, an application for modification in the standing orders can be made either by the employers or the employees and the problem would be considered after following the procedure prescribed by the Act for certifying the original standing orders. Section 11 confers the necessary powers of a Civil Court on the Certifying Officer & the appellate authority. S 12 prohibits the admission of oral evidence which has the effect of adding or otherwise varying or contradicting standing orders as finally certified under the Act, in any Court. Section 13 provides for penalties and the procedure to enforce them. Section 13A deals with the problem of interpretation of the standing orders and S. 13B provides for exemption of industrial establishments therein specified. Section 14 confers on the appropriate Government power to exempt conditionally or unconditionally, any industrial establishment and S 15 confers on the appropriate Government the power to make rules to carry out the purposes of the Act, and, in particular, to provide for the matters covered by cls (a) to (c) of sub clause (2). Section 15 (3) contains the statutory provision that every rule made by the Central Government under S 15 has to be placed before the House in the manner prescribed by it. The Schedule to the Act contains 11 clauses. Clauses I to 10 deal with the several topics in respect of which standing orders have to make a provision and Clause 11 refers to any other matter which may be prescribed. This last clause shows that an addition may be made by the appropriate Government if it is thought necessary to do so. That in brief, is the scheme of the Act.

DRAFT STANDING ORDERS

The scheme of the Industrial Employment (Standing Orders) Act, 1946 has already been given. An employee has to submit the draft Standing Orders to the Appropriate authority for certification. A draft of the Standing Orders is given below. Necessary alterations can be made keeping in view the nature of industry.

1 Date of Enforcement

These orders shall come into force on _____ and shall apply to all workmen as defined in the Industrial Employment (standing Orders) Act, 1946, and employed in M/s _____ (herein mention the name of the concern)

2 Definitions

In these orders unless there is anything repugnant to the subject or context —

- (a) The 'Manager' includes the General Manager, Factory Manager, Works Manager or any other person duly authorised, and notified in writing to exercise, for the time being all or any of the powers, or functions of a Manager under these orders
- (b) 'Management' means the partner, Director, the Managing Agent, Secretary, Proprietor or such other person having authority to manage the Company
- (c) 'Habitual' means any Act of commission or omission which is established and repeated more than two occasions within a period of one year
- (d) 'Factory Premises' means the entire factory area including the factory, stores, Godowns and office etc., surrounded by the outer boundary wall of the Company
- (e) Singular will include plural and masculine will include feminine and vice versa

3 Classification of Workmen

"Workmen" shall be classed as under —

- (i) Permanent
- (ii) Badi (substitute)
- (iii) Temporary
- (iv) Apprentice (Learner)
- (v) Probationer
- (vi) Casual

(i) A permanent workman is a workman who has been employed on a permanent basis by an order of the Manager in writing

(ii) A 'Badli' is a workman whose name is entered in the muster roll as badli, and who has been given a badli card, requiring him to attend the factory every day and entitling him to work in the place of any workman who is absent

(iii) A 'temporary workman' is one who is engaged for work of essentially temporary nature or who has been employed in a temporary vacancy or to fill in temporary need of an extra job of permanent nature or to do as specified job or who has been employed for a specified period

(iv) 'Apprentice' (Leaner) is one who is engaged for being trained and who may or may not be paid an allowance during the period of his training

(v) 'A probationer' is one who has been provisionally employed to fill a permanent vacancy in a post. He will not become permanent automatically even after the successful completion of probationary period or extension thereof unless so down in writing. If a permanent workman is employed as a probationer in new or a higher post, he may at any time during the probationary period be reverted to his old permanent post by an order in writing. The probationary period may be extended by the Manager if he desires

(vi) A 'casual' employee is one who is engaged for work, of casual nature and or intermittently

4 Token Tickets and Attendance Pass

(a) A person at the time of seeking employment may be required to make an application in writing

(b) Every workman shall be provided with an attendance card showing his name, father's/husband's name, pass number, department, shift and designation on a token which on attendance each day, he shall deliver at the place provided, or to the person authorised to collect the same

(c) If a workman loses token or attendance card then a duplicate card or token may be issued to him and he shall be liable to pay 15 paise for the same. In case the token or card becomes defaced due to normal wear and tear, the same will be replaced by the management without any charge

(d) A workman who loses his attendance card or token shall report the loss immediately to the time office to avoid misuse by an unauthorised person

(e) The Manager may issue a separate identity card to a workman if it is considered necessary. The identity card may bear the photograph of the workman and other particulars.

(f) Every workman at the time of his ceasing to be an employee of the factory shall get his identity card cancelled and shall surrender the attendance card or the token to the Manager. The identity card or attendance card or token shall always remain the Management's property.

(g) If the attendance card or the identity card of a workman is required by any officer of the factory at any time within the factory premises the workman will produce the same for inspection.

V Hours of Work and Notices

(a) The period and hours of work of all classes of workman shall be regulated as provided in the Factories Act.

(b) The overtime work and payment thereof shall be regulated as per Factories Act and the rules made there under.

(c) The periods and hours of work and rate of wages for all classes of workmen shall be pasted and exhibited on the notice Board at or near the gates used by the workmen for entrance or exit.

(d) All such notices shall be in English and also in Hindi.

6 Notices Specifying

(i) Days to be observed by the Company as holidays

(ii) Pay days, wage rates and

(iii) Unclaimed wage pay days, shall be pasted at the factory gate as required by the Factories Act and the Payment of Wages Act as the case may be.

7 Any wage due to a workman but not paid on the usual pay days on account of its being unclaimed, shall be paid on such unclaimed wage pay days as may be notified to the workmen, and following the date on which substantiated claim is presented by the workman or on his behalf by the legal representative or heir provided such claim is submitted ordinarily within a period of six months from the date on which the wage become due, but in no case beyond a period exceeding one year from the date on which the wage become due.

8 Shift Working

(a) Shift working will be regulated in accordance with the provisions of the Factories Act, and any settlement, agreement or award in force.

(b) More than one shift may be worked in a department or departments, section or sections of department. If more than one shift is worked, the workers may be transferred from one shift to another, and from one department to another.

(c) One or more shifts may be discontinued in any department for a valid and sufficient reason after putting up notices to that effect at the Department or Section concerned.

(d) If as a result of discontinuance of any shift any workman becomes surplus to requirements, then he may be provided with alternative employment at the same wage in a job of the same or similar nature, and if no such job is given then he shall be retrenched in accordance with law.

(e) If any discontinued shift is restarted the workmen so retrenched shall be informed and offered re employment in accordance with the requirements of the Industrial Disputes Act, and if he does not join as required under the law then he will lose his right of re-employment.

9 Attendance Absenteeism and Late Coming

(a) All workman shall be at work at their respective work places in the Factory at the time fixed and notified to them. Workman attending late shall be liable to be shut out and treated as absent from duty.

(b) Any workmen who after presenting his token, ticket or card pass is found absent from his work place or places of the work during working hours without permission of the shift incharge on duty, or any other immediate superior or without any sufficient reason shall be liable to be treated as absent.

(c) If a workman is found absent during working hours from his place of work except in the circumstances mentioned in clause (b) he shall be liable to be treated as absent for the whole day in case his absence commences before the rest interval period and for half a day in case his absence commences after the rest interval period.

(d) A workman who shall be absent from work shall not be entitled to any wages for the day of rest succeeding the period of absence.

(e) Deduction, if any, from the wages will be made for the period of absence in accordance with the provisions of Payment of Wages Act.

10 Leave, Absence and Holidays

Workmen will be entitled to leave with wages and holidays

n accordance with any statute, award, settlement or agreement for the time being in force Such leaves shall be granted by the Manager

11 Leave Without Wages

(a) A workman may be granted leave without wages, for a total period of 6 days during a calendar year Grant of such leave shall depend upon the exigencies of work

(b) If a workman applies for leave on the ground of sickness the same shall be accompanied by proof of the sickness Generally such application shall be accompanied by a medical certificate issued by E S I Doctor if the workman is in the town or if out of Delhi where such E S I Doctor is available

(c) In other cases not covered by clause (b) above, the leave application shall be accompanied by a certificate granted by any other registered medical practitioner

(d) Where an application for leave due to sickness is accompanied by E S I Doctor's certificate, such leave shall be granted by the Manager except in case where the Manager feels any reasonable doubt about the certificate of sickness, produced by the workman, then the Manager may require the workman to produce a certificate of any other medical practitioner, or get the fact of sickness verified in any manner, at the expense of the Management

(e) Any workman who desires to get leave, shall apply in duplicate clearly stating the date from which leave is required and reason for the grant of such leave and shall submit the same to the Officer, authorised for the purpose

(f) A workman shall apply for leave with wages due under the Factories Act, Ordinarily within 14 days before the date of commencement of such leave

(g) In case a workman applies for leave without wages he shall submit the application, one week before the commencement of such leave

(h) The concerned officer shall acknowledge the receipt of such application on the duplicate copy which the workman shall keep in his safe custody as proof of his having delivered the application

(i) It shall be the duty of the concerned officer to pass orders at least three days before the date of the commencement of leave applied for

(j) If the leave applied for is of an urgent nature, i.e. if it is to commence on the date of the application or within three days

thereof, the application will be dealt without delay, and orders passed thereon by the Manager without delay

(k) If leave applied for is granted, a leave-pass shall be issued to the workman. If it is refused, the fact of such refusal and its reasons shall be recorded in writing in a register to be maintained for the purpose and if the workman so desires a copy of the entry in the register shall be supplied to him.

12 If a workman applies for leave, he will give in the application for leave, the address at which he can be reached or contacted during the leave period and he shall proceed on leave only after handing over the charge, if any.

13 (a) If a workman after proceeding on leave, desires an extension thereof, he shall make an application in writing for the purpose, giving reasons thereof to the specified authority, in sufficient time for the reply to reach him before the expiry of leave. He shall mention in the application for extension of leave, his name, father's name, department, shift and full address at which he desires the reply to reach him.

(b) In the absence of any such address given by the workman the reply of the management shall be sent to the address available with the management.

(c) Application for sick leave when at home or extension of any leave must be made in writing at the earliest possible opportunity with satisfactory evidence and if not so made he will be deemed absent and no reason of sickness or otherwise will be acceptable as an excuse for such absence.

14 If a workman is absent from work for 8 days without leave or remains absent after the expiry of the period of leave originally granted or subsequently extended, he shall lose his appointment automatically and shall be deemed to have left the services of the Company unless he returns to duty within 8 days of the due date and gives explanation in writing for his absence to the satisfaction of the management.

15 (a) No workman shall remain absent from work or refuse to work.

(b) No workman shall proceed on leave without having his leave sanctioned.

(c) A workman returning from sanctioned leave on due date and time will proceed immediately to his old department and operation, or, if ordered, to a similar operation in another department. If, for any reason, that is also not possible, the workman will be employed on any other job at a rate not less than the rate

on which he was last employed. In the event of a charge of production having taken place in his department during his absence on leave, the returning workman may be transferred to any piece rate or other operation irrespective of on what basis he may have been originally employed provided the rate of the new job is not lower

(d) If ten or more workmen in concert action absent themselves from work or refuse to work without reasonable cause and without serving upon the Manager fifteen days clear notice in writing of their intention to do so then it will be open to the Manager to deduct from their earned wages in amount not exceeding eight days wages at a time in accordance with the provisions of the Payment of Wages Act

16 Transfer

A workman shall be liable to be transferred from one machine to another and from one shift to another or from one department to another or from one section to another or from one factory to another, whether located in the same place or elsewhere and whether existing at the time these Standing Orders come into force or comes into existence and is set up in future, provided that such transfer does not entail reduction in total wages

(2) The Manager may depute any workman for out station duty in connection with the work or business of the Company

17 Holidays

(a) The number of holiday (weekly off days) to be granted to the workman and the days to be observed a national and festival holidays shall be regulated in accordance with the Factories Act and any award or agreement or settlement or any law in force for the time being

(b) A workman may be called upon by the Manager to work on any festival or weekly off days

(c) If a National/Festival holiday falls on a close day or weekly off no extra holiday shall be allowed in lieu thereof

(d) A festival holiday may be changed either permanently or on a temporary arrangement with mutual agreement between the management and the employees, but no change shall be claimed by either party as a right

(e) A holiday or close day may be prefixed or affixed to earn leave or leave without pay, with written permission of the Manager

wearing apparel, cigarettes, bidi, match-box or such like personal belongings

20. Closure, Stoppage and lay off.

(a) The Manager, may in the event of strike or slow down affecting wholly or partially any section or department, close down either wholly or partially such section or department and/or such section or departments as might have been affected or may be affected by the strike or slow down, and lay off any number of workmen as may be considered necessary. In case of lay-off due to strike or slow down, the workmen laid off will not be entitled to any wage or compensation

(b) The Manager may, in the event of fire, act of God, catastrophe, epidemic, riot, civil commission, stoppage or shortage of fuel, power, steam, or break down of machine or machines, accumulation of stock, shortage of raw material or finance or any other sufficient reason, may stop any machine or machines, department or section of a department wholly or partially and lay off any number of workmen affected by such cause, without any notice

(c) A workman who is entitled to lay off compensation under the *Industrial Disputes Act*, present himself at the work spot at the time appointed for the purpose, during normal working hours, on any day, and is not given any work by the employer, within two hours of his so presenting himself, shall be deemed to have been laid off for that day, provided that (i) if the workman instead of being given employment at the commencement of any shift for any day is asked to present himself for the purpose during the second half of the shift for the day, and is given employment, then he shall be deemed to have been laid off only for one half of that day, (ii) if he is not given any such employment even after so presenting himself in the second half of the shift he shall not be deemed to have been laid off for the second half of the shift, but he shall be entitled to full wages for that part of the day

(d) A workmen will be entitled to lay-off compensation in accordance with the provisions of the *Industrial Disputes Act* and subject to the conditions and restrictions mentioned therein. In calculating the compensation for lay-off, in the case of piece rated workers, the average daily earnings for the previous wage period in which the workman has worked, shall be taken to be the daily wage

(e) If lay-off continues uninterruptedly for one month then the concerned workman shall be retrenched according to law.

(f) If, work is resumed, reasonable notice shall be given of such resumption of work, by its being put up on the notice board for the factory.

(g) If, however, any workman fails to report himself for duty and joins his post within the date specified in the notice he shall be liable to be treated as having abandoned his employment unless sufficient reason to the satisfaction of the Manager is shown for such non attendance

21 Termination & Resignation

(a) Any workman desirous of leaving service of the factory shall be given one month written notice to the Manager of his intention to resign. Such workman may be relieved of his appointment by the Manager at any time even before the expiry of the notice of one month with mutual consent. A discharge slip shall be issued to such workman to enable him to have his account cleared. The wages and other dues, payable to such workman shall be paid within two days of the expiry of the notice or the date of relieving if relieved earlier, provided that the workman has handed over charge, alongwith all properties of the factory in his possession including the quarter in his occupation, if any

(b) If, however, the workman does not hand over the charge of properties in his possession or vacate any quarter in his occupation, the management shall have the liberty of withholding all money due to the workman, till he hands over the properties of the Company to the management including the quarter

22 Discharge Simplificiter

(a) The employment of any permanent workman shall be liable to be terminated by way of discharge simpliciter by giving him one month notice or by payment of one months wages in lieu thereof

(b) The service of a workman, who at any time, would not able to do any work which is normally expected from an employee of his cadre or who is unable to display the degree of skill and efficiency required in his trade, shall be liable to termination without notice or any consideration thereof

(c) Probationers other than those transferred from permanent posts in the factory, badlies, temporary workmen or apprentices or casual may leave or be discharged from service, without any notice or without assigning any reason by an officer, not below the rank of the head of department

(d) If any permanent workman leaves service without notice he shall be liable to a deduction of wages or refund of wages for the period of notice or for the period by which the notice falls short of one months

23 Retirement

(a) A workman shall be liable to retirement on reaching the

age of superannuation, i.e., on attaining age of 58 years at any time at the discretion of the Manager

(b) The workman shall be liable to be retired earlier on medical ground, if he becomes medically unfit and is certified to be unfit by the Medical Officer of the factory

24 Disciplinary Action for Misconduct

A workman may be fined upto 3 paise in a rupee of his wages in a month, censured or warned for any of the following acts or commissions, after obtaining his explanation and considering the same —

- (a) Negligence of duties
- (b) Absence from work place during working hours
- (c) Absence without leave on any day without sufficient reason
- (d) Expectoration, spitting or urinating at places other than those specified for the purpose

25 The following are examples of acts and omissions which will be treated as major misconducts for which the workman may be dismissed, discharged, demoted, suspended or his increment withheld —

- (1) Insubordination or refusal to work or disobedience of any lawful and reasonable order to a superior whether alone or long with others
- (2) Using of abusive or offensive language towards his superior
- (3) Striking work or slow-down or inciting other to strike or slow-down
- (4) Theft, fraud or dishonesty
- (5) Demanding, taking or offering or giving a bribe or any illegal gratification in connection with the factory work or employment or borrowing or accepting present or presents from subordinates or carrying on money-lending business within the factory premises
- (6) Unauthorised occupation or retention of property of the factory
- (7) Engaging in other employment while in service
- (8) Engaging in any private trade within the factory premises

(9) Engaging in any union activities such as holding meetings demonstration, raising slogans, distributing or displaying handbills, pamphlets, or posters or collecting subscription inside the factory premises, or at the residence of the Management or managerial staff

(10) Damaging or causing waste to production plant machinery stores or other properties of the company or work in progress or tampering with any record machine or safety device

(11) Smoking inside the factory premises

(12) Refusal to accept any communication, notice, order or charge-sheet

(13) Any act subversive of discipline

(14) Preaching or inciting violence or intimidating any employee in regard to work of the factory or riotous or disorderly behaviour

(15) Blocking or obstructing the gate or gates of the factory or office

(16) Coming on duty in intoxicated state or drinking liquor or using other intoxicants like charas, bhang etc., or keeping such thing on person inside the factory premises

(17) Conviction by any court of an offence under any law

(18) Habitual commission or omission of any act for which a fine or warning can be imposed under para 24 above

(19) Negligence of work including keeping the work in arrears, giving less productions, producing more rejection than usual, malingering or delaying the work, progress or production of the factory

(20) Gross negligence resulting in substantial financial loss to the management or in any accident resulting in serious injuries to any person

(21) Failure to observe safety measures

(22) Sleeping or dozing during working hours

(23) Any where within the limits of the Factory committing or inciting other to commit breaches of any law or rules of the Company or the commission of any other act intended to harm the interests of the Company or its employees

(24) Refusal to work on another job or on another machine or department when ordered

(25) Writing of anonymous letter criticising his superiors or the Company.

(26) Theft of employer's or others property inside the factory

(27) Creating disturbance or confusion or agitation of any nature whatsoever in the factory and interfering with or stopping his own or others work for any reason or by any means whatsoever

(28) Loitering or gossiping in the Factory premises during working hours or leaving the place of work without permission

(29) Obtaining leave or advance on false pretext, or working elsewhere during leave or absence, or working elsewhere for private gains or otherwise during off timings or off days

(30) Refusal to perform overtime work or to move to another shift or proceeding on out station duty or to carry out duty assigned at any other place, or refusal to carry out order of transfer

(31) Mis-statement in employment form or other forms

(32) Habitual production of medical certificate

(33) Habitual absence for a day or days less than 6 days

(34) Leakage of information or secrets to an unauthorised person regarding the process of work or business of the Company

(35) Gambling in the factory or acts of immorality

26 (a) Where a disciplinary proceeding against workman is contemplated or is pending or where criminal proceedings against him in respect of any offence are under investigation or trial and the employer is satisfied that it is necessary or desirable to place the workman under suspension, he may, by order in writing, suspend him with effect from such date as may be specified in the order. A statement setting out in detail the reasons for such suspension shall be supplied to the workman within a week from the date of suspension

(b) A workman who is placed under suspension under clause shall, during the period of such suspension, be paid a subsistence allowance at the following rates, namely,

(i) Where the enquiry contemplated or pending is departmental, the subsistence allowance shall, for the first ninety days from the date of suspension, be equal to one-half of the basic wages dearness allowance and other compensatory allowances to which the workman would have been entitled if he was on leave with wages. If the departmental enquiry gets prolonged and the workman conti-

the remaining period he shall be entitled to the same wages as he would have received if he had not been placed under suspension after deducting the subsistence allowance paid to him for such period

Provided also that where an order imposing fine or stoppage of annual increment or reduction in rank is passed under this clause the workman shall be deemed to have been on duty during the period of suspension and shall be entitled to the same wages as he would have received if he had not been placed under suspension after deducting the subsistence allowance paid to him for such period

(d) If on the conclusion of the inquiry, or as case may be, of the criminal proceedings the workman has been found to be not guilty of any of the charges framed against him, he shall be deemed to have been on duty during the period of suspension and shall be entitled to place under suspension, after deducting the subsistence allowance paid to him for such period,

(e) The payment of subsistence allowance under this standing order shall be subject to the workman concerned not taking up any employment during the period of suspension

27 In awarding punishment under this standing order, the manager shall take into account the gravity of misconduct, the previous record, if any, of the workmen and any other extenuating or aggravating circumstances, that may exist. A copy of the order passed by the manager shall be supplied to the workman concerned

28 Determination of Age

In case there is any difference of opinion regarding age of a workman for purposes of retirement or any other purposes the age as declared by him in his provident fund declaration will be treated as conclusive evidence of his age and in the absence of this document the decision of Medical Officer appointed by the Manager shall be final.

29 Means of Redress for Employees Against Unfair Treatment

All complaint arising out employment including those relating to unfair treatment or wrongful exaction on the part of the employer or his agents, shall be submitted to the Manager or other person specified in this behalf with right of appeal to the management

30 Any order, notice, charge sheet, letter or communication may be served on the workman in the following manner :—

(a) By delivering the same personally

(b) Where such personal service is not possible, service shall be effected (i) by affixing the concerned documents on the Notice Board in the Department of the concerned workman or at the Factory Gate or (ii) by sending such notice under postal certificate to the said workman at his last known address

(c) In case any communication sent to any workman by post it shall be deemed to have reached him on the date on which it would have reached him in the ordinary normal course of business

(d) It will be the duty of the workman to notify to the Manager any change in his address from time to time and in case he does not so and any communication is sent to him at his last known address, it will be deemed that it has been duly served upon him

31 Certificate on Termination of Service

Every workman shall be given on demand a service certificate at the time of dismissal, discharge or retrenchment from service and such certificate shall be given within one week of such demand

32 Exhibition of Standing Orders

A copy of these Standing Orders in Hindi and English shall be available with the Manager

33 In case of difference of opinion regarding interpretation of any of the terms of the Standing Orders, the English version will be deemed to be the authentic version.

34 Liability of the Manager

The Manager of the factory shall be held personally responsible for the proper and faithful observance of the Standing Orders

SERVICE RULES OF AN ESTABLISHMENT COVERED UNDER THE SHOPS & LSTABLISHMENTS ACTS

*(Model Rules are given below Necessary changes can be made
by the employers subject to the implications of the Local Acts)*

GENERAL RULES

1 These Rules shall be called Service Rules and shall apply to all employees of all companies or concerns subsidiary to it, whether working in the Head Office or anywhere else

2 **Definition** In these Rules unless there is anything repugnant to the subject or context

(a) "Company" means and includes any Company or concern subsidiary to the said Company

(b) "Director" means, the Director of the Company incharge of the Administration at the time being and from time to time and includes such officer of the Company to whom any of the powers or duties of the Director may be assigned by the Company at any time for any period

(c) "Manager" means such officer of the Company as may be designated as Manager for the purposes of these Rules

(d) "Permanent" employee of the Company is an employee who has been appointed on permanent basis under a proper letter of appointment issued under the signatures of the Director and shall not include an employee who is on probation

(e) A "Probationer" is an employee who is provisionally employed with a view to filling a permanent post and is on trial to prove his fitness for holding the said post on permanent basis

"Temporary" employee is an employee who has been employed for the job which is essentially of a temporary nature likely to be finished within a specified period or purpose as may be extended from time to time

(g) "Casual" employee is an employee whose employment is of casual nature and includes manual staff and is paid on the basis of muster rolls for the day or days on which he works for the company according to the wages fixed by the company or under any law for the time being in force

3 Appointment —All appointments shall be made in the name of the company under the orders of the Director and all such appointments shall be signed by the Director or by any officer or official of the Company appointed by the Director by name or designation for this purpose. No other letter of appointment except as issued according to these rules shall be held as valid and binding on the Company.

4 (Herein mention the hours of work as per provisions of the Local Act)—(a) The working hours of the office of the Company will be from— to— with a break of 1 hour from— to— provided that any employee may sit for longer hours in his own interest to finish his pending work for the day for which he shall not be paid any allowance, provided further that the working of the telephone operators as such will be from— AM to— PM (from— A M to —P M of one operator and—P M to—P M, of the other operator) in addition to other clerical work as may be assigned to these from time to time, provided also that if during any period of stock taking or making of accounts or any other purpose, any employee is asked to sit for longer period than the working hours of the company he or they shall have to do so.

(b) If any employee is late in attending the office or leaves the office 30 minutes after or before the working hours fixed as the case may be, he shall be treated as on leave for half a day and if during one month such number of contingencies is more than four it shall be treated as leave without pay for one day. If an employee is late in attending the office or leaves the office before time frequently, disciplinary action shall be taken against him and he may be liable to be removed from service without further warning.

5 Conditions of Service —(a) Every employee shall, in accordance with the policy laid down by the company perform the duties entrusted to him from time to time,

(b) employees except to their direct superior authorities shall not divulge any secret of the company and shall be bound to keep in secret all matters pertaining to the affairs of the company,

(c) All books, records and articles belonging to the company shall remain in the office premises of the Company and the Manager shall see that these are safely kept and maintained in their proper places.

(d) No employee shall move even temporarily any of the books, records, papers etc of the Company from the premises of any of the offices of the Company to any other place without the previous permission of the Manager of the Company,

(e) Every employee unless prevented by ill health shall during

the tenure of his service devote his whole time and attention to the business of the Company in all respects, conform to directions and regulation made by the superior authorities and obey their orders and shall faithfully serve the company and use his outmost endeavour to promote the interests thereof and serve the Company at such place or places and in such capacity as the Company may from time decide or direct,

(f) No employee shall, unless previously authorised by the Company or by the Director or any other competent authority in this behalf in writing receive, collect or place any cash, property and assets of the Company or sign on behalf of the Company or any other corporate or non corporate business managed by the Company ,

(g) Every employee shall before close of the day, deposit with the cashier or any other person authorised to receive cash as the case may be, the cash received or collected by him for and on behalf of the Company during the course of the day ,

(h) Any employee disregarding the above provisions regarding receipt, collection or realisation of cash, property or other assets of the Company or signing on behalf of the Company any receipt of cash shall render himself liable to immediate disciplinary action in addition to such other legal action as the Company may be advised to take against him.

(i) In the case of employees taking money in advance from the Company for purchases of materials or for other purposes shall render account of the same at least once in every week to the officer who sanctions the advance

6 Discipline —(a) Every employee shall observe courtesy and politeness

(b) No employee shall enter into monetary dealings with his colleagues, subordinates or Company's clients or customers nor accept any present from them

(c) No employee shall use the Company's name or properties for his own purpose and benefits, except when permitted to do so by the Company

(d) Every employee shall present himself in his seat as the office opens by signing his presence in the relative register and shall not unless otherwise arranged for leave before the closing time and without signing the register at the time of leaving Any employee who does not sign the register at the time of coming to and leaving the office shall be marked absent. This, however, will not apply to out-door staff who shall be governed by rule 4(c) above

7 (a) During the probationary period the services of an employee may be terminated without stating any reason on serving 24 hours notice. Similarly the probationer can quit service during the probationary period on serving the Company with 24 hours notice and handing over properly charge to the employee nominated to take over charge from him.

(b) The probationary period fixed in the first instance may be increased at the discretion of the Director. At the end of the probationary period the Company may in its discretion terminate or confirm the service of the probationary employee.

(c) After confirmation unless otherwise agreed upon in the letter of appointment any permanent employee of the Company shall be at liberty to resign from the service of the Company at any time on giving the Company one month's notice in writing of his desire to do so or on surrender of one month's salary in lieu thereof or salary for the unexpired period of notice.

(d) After confirmation, unless otherwise agreed upon in the letter of appointment the Company shall be entitled to determine the term of office of any member of the permanent staff on giving him one month's notice in writing or on payment of one month's salary in lieu thereof or salary for the unexpired days of the period of notice. Notwithstanding anything stated hereinbefore in this clause, no such notice or payment in lieu thereof will be required when an employee has retired in accordance with the provisions of sub rule (e) hereunder.

(e) All the employees of the Company, subject to good health, and efficiency shall work in the Company upto completing the age of 60 years (as the case may be) and shall immediately retire as soon as the age of 60 years is completed. The company, however, may prematurely retire any permanent employee of the Company on grounds of ill health, inefficiency and slackness in the performance of his duties. The Company also at its sole discretion may re-employ such of the retired employees as it may consider necessary on such terms and conditions as the Company may deem suitable. Such employment shall not be for more than one year at a time. The employee or employees thus re-employed after the age of superannuation shall not be entitled to join the Company's Provident Fund, if and when introduced, or claim gratuity.

(f) Every employee at the time of his employment shall be required to produce as the proof of his age a certified copy of the extract of Municipal or District Board register in respect of birth or certificate of age from his school or university. In case of existing employees where such proof of age has not already been submitted the employee shall be required to produce the proof of

his age as above and if such proof is not available he shall be required to either produce the genuine horoscope or submit himself to medical examination to a doctor approved by the Company for determining his age and the doctor's report about the age of such employer shall be binding on the Company and the employee

8 The service of any employee shall, notwithstanding any thing to the contrary contained in his letter of appointment be terminable forthwith without any notice if the employee —

(i) is guilty of disobedience, insubordination, breach of discipline, misconduct, breach of service neglect of duty, dishonesty and act of moral turpitude, or criminal act or any act subversive of discipline

(ii) is responsible for breach of any of the provisions contained in the service rules as in force from time to time or other terms of his contract of employment or letter of appointment

(iii) refuses to comply with any lawful order given to him by the company or its authorised agents

(iv) absents himself from his duty without securing leave from the Company unless such absence be due to illness or a serious accident which prevents him from attending his duties and about which the employee is unable to give prior intimation to the Company

(v) directly or indirectly accept any illegal gratification or any bribe or any undeserved or unearned money or property from anyone connected with the work or sale or purchase on behalf of the Company

(vi) make a statement or statements in his application or at the time of his interview which are subsequently found to be incorrect and

(vii) is associated with any offences

In all such cases the Director shall be sole judge and his decision shall be final, absolute and binding on the employees

9 (a) Subject to the contract of service, if any, promotion increment etc of an employee will entirely depend upon the work and ability and satisfaction he gives to the Company in discharge of his duties and upon being otherwise useful to the Company. The Director on the recommendation of the heads of the departments will be the final authority to judge the ability of an employee or the satisfaction given by him to the Company in discharge of his duties or in being otherwise useful to the Company

(b) Unless otherwise agreed upon in the letter of appointment increment will be granted with effect from the date from which it is due at least after one year of confirmed service

10 An employee on termination of service with the Company will hand over charge to the Company of all moneys, files, registers and other properties of the Company in his possession or control and hand over possession of the flat accommodation or quarters if any of the Company or the employees co operative society allotted to him, the said flat, accommodation or quarters being deemed to have been occupied by him under leave and licence of the Company for convenience, performance of his duties and not as a tenant. In the event of failure on the part of the employee to hand over charge and possession of the Company's properties and premises as afore said, the Company shall be at liberty to forfeit the salary, security deposit and other dues if any of such employee payable by the Company, without any prejudice to its rights of action which the Company may have in law against such employee or employees

LEAVE RULES

Privilege, Sickness or Casual

1 **Casual or Sickness Leave**,—(a) An employee shall be entitled in every calendar year to casual or sickness leave with wages for a total period of twelve days but not exceeding four days at a time and not exceeding four days in a month. In special cases the Management may allow more than 4 days casual leave in any month

(b) Leave admissible under clause (a) shall not be accumulated

(c) The employee must always obtain previous permission for casual leave, but when it is not possible to do so he shall apply in writing as soon as practicable for the grant of such leave and Management may condone his absence from duty without previous permission where it appears to it that absence was caused by some unavoidable circumstances beyond the control of the employee

(d) The Management may refuse an application for Casual Leave from an employee on grounds of exceptional pressure of work or on some other ground in the interest of work

(e) When the application for casual leave is on account of sickness of the employee, his wife, or child and the Management is not satisfied about the correctness of the assertion set about therein, it may either (i) get the employee to submit a medical certificate in support thereof from registered medical practitioner or (ii) get the employee or the wife or the child as the case may be examined

at the Company's own expenses by a registered medical practitioner (lady doctor in case of females) for the purpose of writing the facts mentioned in the application and may grant or reject the application on the basis of the certificate of such medical practitioner

2 Privilege Leaves —(a) An employee shall be entitled after twelve months of continuous employment, to privilege leave with full wages for a total period of fifteen days

(1) Provided that where an employee has completed a continuous period of four months he shall be entitled to five days leave for every such completed period

(2) Provided further that a watchmen or care taker who has been in continuous employment for a period of one year shall be entitled to thirty days of privilege leave

(b) Privilege leave admissible under clause (a) may be accumulated upto a maximum period of forty five days

(c) An application for privilege leave should ordinarily be made in writing ten days in advance

(d) Privilege leave cannot be claimed by the employees as a matter of right, but will be granted by the Company subject to the exigencies of service and without detriment to work

(e) In case of illness, the management may grant leave even earlier than the approved service of one year Nothing in these rules bebars the mangement from granting any other leave as it may deem fit besides as mentioned above

WORKING HOURS, SPREADOVER AND OVER TIME WORK FOR ADULT WORKERS

Weekly and daily hours of work, spread over

The Factories Act, 1948, regulates working hours, spreadover, overtime work and other allied matters relating to a factory. Under the Act the hours of work which an adult worker may be asked to perform in one week are limited to 48 hours and daily hours are limited to 9 with a maximum spreadover of 10½ hours inclusive of rest interval which should normally be at least half an hour for 5 hours work. The State Government or the Chief Inspector may allow any factory to work a maximum of 6 hours at a stretch without an interval of rest and the limit of spreadover may be extended to 12 hours by the Chief Inspector of Factories for reasons to be specified by him in writing.

Overtime Work

For any work in excess of 9 hours in any day or for more than 48 hours in any week, overtime wages are to be paid at the rate of double the wages which means basic wages plus other allowances if any, including the cash equivalent of any concession in the matter of food grains and other articles sold to workers at a subsidised rate. Bonns is not to be included for the purpose of computing overtime wages.

Since hours of work of workers are to correspond with the notice of periods of work displayed and the register of adult workers to be maintained in the factory, any work beyond the notified hours would only be permissible for workers covered by the exemption rules under section 64 or when exemption has been obtained under section 65 of the Factories Act. In regard to overtime work, regard must be had to the following maximum limits of work inclusive of overtime.

- (1) The total number of hours of work in any day shall not exceed 10
- (2) Spreadover inclusive of intervals for rest shall not exceed 12 hours in any day
- (3) The total number of hours of overtime shall not exceed 50 for any period of three consecutive months beginning

on the 1st of January, the 1st of April, the 1st of July and the 1st of October

Overtime Muster Roll is to be maintained for workers exempted from the limits of daily and weekly hours of work. This should be preserved for three calendar years and should be available for inspection.

Notice of Period of Work

The law requires that a notice of periods of work for adult workers showing clearly for every day's period, during which they may be required to work should be displayed and correctly maintained in every factory.

"Periods of work" means the starting time and the stopping time. The notice should be in English and in language understood by the majority of workers in the factory. A copy of the notice is to be sent in duplicate to the Inspector of Factories before the day on which the work begins.

Whenever any change is proposed, the same should be notified to the Inspector in duplicate before effecting the change and except with the previous sanction of the Inspector, no such change should be made until one week has elapsed since the last change.

Fixation of the Period of Works

The periods to be shown in the notice are to be fixed beforehand by the Manager and in fixing them the Manager should keep in view the essential requirements given below. Where work of the same kind is carried on by two or more sets of workers during different periods of the day, each of such sets is called "relay" and each of such periods is called "shift".

- (A) The hours of work fixed should not contravene the restrictions regarding daily and weekly hours of work, intervals for rest, spreadover, weekly off and the prohibition of overlapping shifts. The prohibition of overlapping shifts means that a system of shifts should not be so arranged that more than one set or "relay" of workers is engaged in work of the same kind during periods which wholly or partially overlap. The State Government or the Chief Inspector may, by a written order, exempt a factory or a department or a section of a factory from this prohibition.
- (B) Where more than one shift of working is not required the periods of work are to be fixed for all adults the workers who are required to work during the same periods. The periods of work would include the starting time and stopping time on each day of a week.

- (C) Where it is necessary to have more than one shift of working, workers should be classified into groups according to the nature of work and the number of workers in each group is to be indicated. All the groups may not be required to work on a system of shifts and, for each group which is not required to work on a system of shifts, the periods during which the group may be required to work are to be fixed. Periods of work of each relay of the group which is required to work on a system of shifts are also to be fixed.
- (D) Where it is necessary to make the relays subject to pre-determined changes of shifts, a scheme of shifts should accordingly be drawn up. This is to ensure that periods during which any relay of the group may be required to work and the relay which will be working at any time of the day will be known.

Register of Adult Workers

A register of adult workers which should be available to the Inspector during working hours is to be maintained under the Act.

(A) A separate part of the register is to be maintained for each group of worker corresponding to their periods of work showing for each worker

- (a) the name of each adult worker in the factory,
- (b) the nature of his work,
- (c) the group, if any, in which he is included,
- (d) where his group works on shifts, the relay to which he is allotted

(B) Where a worker is transferred from one group to another or one relay to another, the following particulars of transfer are to be entered against his name,

- (a) Under the group from which he has been transferred,
 - (i) the date and actual time of finishing the work in the group or relay, and
 - (ii) the group or relay to which he has been transferred,
- (b) Under the group to which he has been transferred,
 - (i) the date and actual time of commencing work in the group or relay, and
 - (ii) the group or relay from which he has been transferred

(C) Where a worker is discharged from or leaves his employment, the date of his leaving of discharge, as the case may be, is to be entered against his name in the "remarks" column

(D) All entries in the register are to be made in ink and should be legible and should be maintained upto date

(E) All registers should be maintained in English and all dates entered in the register should be in accordance with the English calendar

(F) All registers for the preceeding 3 calendar years should be preserved and be available in the factory for examination by the Inspector

It should carefully be noted that hours of work of adult workers should not only correspond with the notice mentioned earlier but also with the entries in the aforesaid register

Exemption from the Provisions Regarding Working Hours Spreadover, Weekly Off, etc .

The Act provides for exemption from the statutory restrictions regarding working hours, spreadover, etc In certain cases subject to certain conditions, and that is in accordance with sections 64 and 65 of the Act

Under section 64, State Government are empowered to frame rules providing for exemption in certain cases such as urgent repair continuous process, seasonal work etc , which are mentioned in the Act and laying down the general conditions thereof Under section 65(1) the State Government may issue exempting orders in regard to the liability to notify periods of work and under S 65(2) the State Governments or the Chief Inspector of Factories may exempt any or all of the adult workers from the prescribed daily and weekly hours of work, weekly off and spreadover to enable a factory to deal with an exceptional pressure of work The maximum period for which exemption can be granted to a factory in any year under S, 65(2) is three months